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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 97

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THOMAS F. HUNT, ET AL., CO-PARTNERS, DOING BUSINESS AS HUNT & RUSSELL, LTD.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 4, 1952.
CERTIORARI GRANTED OCTOBER 13, 1952.

No. 12985

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THOMAS W. DANT, ROBERT E. DANT (individually and as guardian for Diana Kerr and Daphne Kerr), JOHN R. DANT, ELEANOR C. DANT, MARY B. DANT, R. J. DARLING, E. S. GOODELL, MRS. MARY GOODELL, GLEN W. CHENEY and DOROTHY D. McNARY, co-partners doing business as Dant & Russell, Ltd.,

Respondents.

Transcript of Record

In Two Volumes

Volume I

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Petition for Enforcement of Order of the National Labor Relations Board.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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United States of America
Before the National Labor Relations Board
Nineteenth Region

Case No. 36-CA-100

In the Matter of

THOMAS W. DANT, ROBERT E. DANT, individually and as guardian for DIANA KERR and DAPHNE KERR), JOHN R. DANT, ELEANOR C. DANT, MARY B. DANT, R. J. DARLING, E. S. GOODELL, MRS. MARY GOODELL, GLEN W. CHENEY, and DOROTHY D. McNARY, Co-partners doing business as DANT & RUSSELL, LTD.,

and

INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 6-7

COMPLAINT

It having been charged by International Woodworkers of America, Local 6-7, that Thomas W. Dant, Robert E. Dant (individually and as guardian for Diana Kerr and Daphne Kerr), John R. Dant, Eleanor C. Dant, Mary B. Dant, R. J. Darling, E. S. Goodell, Mrs. Mary Goodell, Glen W. Cheney, and Dorothy D. McNary, Co-partners doing business as Dant & Russell, Ltd., Redmond, Oregon, have engaged in and are engaging in certain unfair labor practices affecting commerce as set forth in the Labor Management Relations Act of 1947, 61 Stat. 136,

herein called the Act, the General Counsel of the National Labor Relations Board on behalf of said Board, by the Regional Director for the Nineteenth Region, designated by the Board's Rules and Regulations, Series 5, as amended, Section 203.15, hereby issues this Complaint and alleges as follows:

I.

Thomas W. Dant, Robert E. Dant (individually and as guardian for Diana Kerr and Daphne Kerr), John R. Dant, Eleanor C. Dant, Mary B. Dant, R. J. Darling, E. S. Goodell, Mrs. Mary Goodell, Glen W. Cheney, and Dorothy D. McNary, hereinafter called the respondents, are, and at all times herein alleged were, co-partners doing business as Dant & Russell, Ltd., engaged in the operation of a planing mill and moulding plant at Redmond, Oregon.

II.

The respondents, in the course and conduct of their business and at all times herein alleged, continuously have shipped from their mill and plant to states and territories of the United States other than the State of Oregon, lumber valued in excess of $100,000 annually, and continuously have purchased for use in their business, supplies and equipment originating at points outside the State of Oregon, valued in excess of $10,000 annually.

III.

International Woodworkers of America, Local No. 6-7, herein called the Union, is and, at all times hereinafter mentioned, has been a labor organization

within the meaning of Section 2, subsection 5 of the Act.

IV.

On or about July 18, 1949, the respondents discharged their employees, Max Gassner and Henry J. Christopherson, and have at all times thereafter refused to reinstate said employees because of their membership in and activities on behalf of, the Union.

V.

By all the acts of the respondents as set forth and described in paragraph IV, above, and by each of said acts, the respondents interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts and by each of them, the respondents have engaged in, and are now engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

VI.

By the discharge of Max Gassner and Henry J. Christopherson, as set forth and described in paragraph IV, above, the respondents discriminated, and now are discriminating, against their employees in regard to hire or tenure of employment, and thus discouraged, and now are discouraging, membership in the Union, and thereby engaged in, and are thereby engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the Act.

VII.

The activities of the respondents, as set forth and described in paragraph IV, above, occurring in con-

nection with the operation of the respondents as described in paragraphs I and II, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states of the United States and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VIII.

The aforesaid acts of the respondents, as set forth and described in paragraph IV, above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 27th day of March, 1950, issues this Complaint against Thomas W. Dant, Robert E. Dant (individually and as guardian for Diana Kerr and Daphne Kerr), John R. Dant, Eleanor C. Dant, Mary B. Dant, R. J. Darling, E. S. Goodell, Mrs. Mary Goodell, Glen W. Cheney, and Dorothy D. McNary, Co-partners doing business as Dant & Russell, Ltd., the respondents herein.

[Seal] /s/ THOMAS P. GRAHAM, JR.,
Regional Director, National Labor Relations Board,
Nineteenth Region.

Received in evidence 6/2/50.

General Counsel's Exhibit 1-F

[Title of Board and Cause.]

ANSWER

Comes now Thomas W. Dant et al., co-partners

doing business as Dant & Russell, Ltd., herein called the respondents, by Robert E. Dant, one of the partners, and for their answer to the complaint in this proceeding denies, admits and alleges:

I.

Respondents deny, generally and specifically, each and every allegation contained in Paragraphs IV, V, VI, VII and VIII of the Complaint, except that respondents admit that they discharged Max Gassner and Henry J. Christopherson on or about July 18, 1949.

II.

For an affirmative defense, respondents allege that the said Max Gassner and Henry J. Christopherson were discharged for good and sufficient causes, some of which are insubordination, failure to perform a full day's work, loafing on the job, leaving their jobs without permission or authority, stalling, slowing down, gross inefficiency, leaving lumber in solid loads which they had been directed to pile, thereby causing staining of the lumber and considerable loss in the value thereof, impeding production, gross negligence, and a total and wilful disregard of their responsibilities as employees of the respondents.

Wherefore, respondents Dant & Russell, Ltd. pray that the Complaint herein be dismissed.

DANT & RUSSELL, LTD.
/s/ By ROBERT E. DANT,
Partner.

State of Oregon,
County of Multnomah—ss.

I, Robert E. Dant, being first duly sworn, depose and say that I am one of the partners in Dant & Russell, Ltd., the respondents herein, and that the foregoing Answer is true as I verily believe.

/s/ ROBERT E. DANT

Subscribed and sworn to before me this 12th day of May, 1950.

[Seal] /s/ J. P. STIRLING,
Notary Public for Oregon.

General Counsel's Exhibit 1-F Received in Evidence 6/2/50.

[Title of Board and Cause.]

Robert E. Tillman, Esq., for the General Counsel.
J. P. Stirling, Esq., of Portland, Oregon, for the Respondents.
William A. Babcock, Esq., of Portland, Oregon, for the Union.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

Upon a charge filed on August 3, 1949, by International Woodworkers of America, Local 6-7, (herein called the Union), the General Counsel for the National Labor Relations Board, by the Regional Di-

rector for the Nineteenth Region (Seattle, Washington), issued a complaint on March 28, 1950, alleging that the Respondents, by discriminatorily discharging and thereafter refusing to reinstate two of their employees, have engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a)(1) and (3) and Section 2(6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the charge and the complaint were duly served upon the Respondents. The Respondents filed an answer denying the commission of the unfair labor practices alleged in the complaint; they also interposed affirmative defenses to the complaint.

Pursuant to notice, a hearing was held in Bend, Oregon, from June 2 through June 7, 1950, before the undersigned Trial Examiner. All parties were represented by counsel and participated in the hearing with full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the hearing the Respondents were permitted to amend their answer. The Respondents also moved to dismiss the complaint, upon which ruling was reserved; the motion is now disposed of in accordance with the findings and conclusions set forth below. A motion to conform the pleadings to the proof was granted.

All parties presented oral argument before the Trial Examiner and were afforded an opportunity to file briefs and proposed findings of fact and conclusions of law. The Respondents filed a brief.

Upon the entire record in the case, and from his observation of the demeanor of witnesses, the Trial Examiner makes the following:

Findings of Fact

I. The business of the Respondents

The Respondents are a copartnership engaged in the operation of a planing mill and molding plant at Redmond, Oregon. The Respondents annually make out-of-State shipments and purchases exceeding a value of $100,000 and $10,000, respectively.

I find that the Respondents are engaged in commerce within the meaning of the Act.

II. The organization involved

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. The unfair labor practices

A. The pleadings and preliminary motions

The complaint alleges that the Respondents discriminatorily discharged Max Gassner and Henry J. Christopherson on July 18, 1949, because of their membership in and activities on behalf of the Union. The Respondents admitted the discharges, but stated in their answer that they were made "for good and sufficient causes, some of which are insubordination, failure to perform a full day's work, loafing on the job, leaving their jobs without permission or authority, stalling, slowing down, gross inefficiency, leaving lumber in solid loads which they had been directed to pile, therefore causing staining of the

lumber and considerable loss in the value thereof, impeding production, gross negligence and a total and willful disregard of their responsibilities as employees of the Respondents."

The Respondents preliminarily moved to dismiss the complaint on the ground, in effect, that the Board has no jurisdiction to entertain the present action. In support thereof, the Respondents rely on the following article of a contract which was operative between the Union and the Respondents at the time of the discharges:

Article VII—Suspension or Discharge

In the event that any employee shall be suspended or discharged, if such employee believes that he has been unjustly dealt with and requests the Union to represent him, the matter shall be taken up by the Union standing committee with the management committee. If it be determined that the employee has been unjustly suspended or discharged, or that the action taken was not merited in all of its terms, the Company agrees to reinstate or reemploy such employee under such circumstances as may be agreed upon. Any suspension or discharge not called to the attention of the Company by the Union within seven days from the date thereof shall be considered as waived, and thereafter shall not be made the basis of a complaint or grievance.

There shall be no discrimination against any of the employees because of any lawful activity on behalf of the Union.

Another supplemental provision of the contract, Article VI, reads in part:

> A grievance committee and a Commissioner of the U. S. Conciliation Service shall meet within five days of the presentation of any grievance and there shall be no strike or lockout pending a meeting of this committee; the grievance committee being the same as set up in the contract except that the representative of the Conciliation Service shall sit in as Chairman.

The Respondents assert as a first proposition, that the foregoing grievance procedure applies to the discharges here in dispute; that the procedure was followed, with the result that the employees were not reinstated; and, therefore, that the dischargees are bereft of further relief in the matter. The Respondents assert as a second proposition, that the discharges, if discriminatory, involve a breach of the second paragraph of Article VII set forth, above, and, therefore, are in any event solely a matter for judicial determination and not within the Board's competence.

The record shows that the Union promptly took up the discharges as a grievance with the Respondents and that a commissioner of the United States Conciliation Service attended a second such meeting between the parties. At these meetings, the Union sought reinstatement for both employees; the Respondents, on the other hand, refused reinstatement. The commissioner made no recommendation to the

parties regarding the merits of the dispute. Both parties were adamant and neither employee was taken back. The Union announced, upon the inconclusive result of these meetings, that it would file the unfair labor practice charges in the present case.

It is apparent merely from reading the foregoing grievance provisions that the contract does not provide a method for the conclusive disposition of grievances where, as in the present situation, neither party budges from its original position. The contract merely provides only for discussion of grievances but not for their resolution; such discussion was had. In effect, therefore, the contract makes no provision for reinstating the employees unless the Respondents are willing to reinstate them. Under these circumstances, the Respondents' contention is tantamount to a claim of the right to decide, as they will, their own unfair labor practices. This hardly is an appealing situation for the Board to relinquish its statutory authority of preventing unfair labor practices, a power which "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise" (Section 10(a) of the Act). And, without considering whether the Union or the discharged employees also may obtain additional relief in other forums for alleged breach of contract, the Respondents' second argument for divesting the Board of jurisdiction in the present unfair labor practice action is similarly groundless. N.L.R.B. vs. Walt Disney Productions, 146 F. 2d 44 (C.A. 9), cert. denied 324 U.S. 877; N.L.R.B. vs. Newark Morning Ledger Co., 120

F. 2d 262, at 266 (on rehearing) (C.A.3), cert. denied 314 U.S. 693.

The Respondents' motion to dismiss the complaint is denied. Accordingly, I shall now consider the case on its merits.

B. Description of piling operations

As Christopherson and Gassner worked as "pilers" until their discharge on July 18, 1949, it may be well to understand what a lumber piler does in the Respondents' operations.

After timber is felled, the logs are cut into lumber at a sawmill. This cut lumber is rough and green and of various lengths, widths, and thicknesses; it also is of three general quality grades—select, shop, and common, which is the descending order of their comparative value. From the sawmill the lumber is trucked to Redmond, Oregon, where it is dumped in the Respondents' yards.

Staining: A physical action, in the nature of a fungus growth, occurs in green lumber when it remains in the solid masses as received from the sawmill. This action results in staining, manifested by a bluish color, which depreciates the market value of the lumber. Staining may be prevented by drying the lumber in a kiln, or by seasoning it in the open air (called yard or air drying). The lumber must be properly stacked during this seasoning or drying period so that the heat or air may get at the surfaces of the lumber. This stacking operation is called piling and it is here that the pilers enter the functional picture.

Square and Unit Piling: The Respondents generally used two methods of piling green lumber during the period under discussion, namely, square piling and unit piling; however, in or about August 1948, they changed from the square method to unit piling. The piles in both methods are constructed in the yard by a team of two pilers. In square piling the crew builds a pile 16 feet long, 16 feet wide, and 8 feet high. (The crew may square pile either by hand, called bar piling, or by machine.) The pile is supported at the base by cross pieces called pile bottoms. A layer (called course) of lumber comprising a number of pieces having a total width of 16 feet with a small space between each piece is placed on the pile bottoms at right angles to the bottoms. Three or four (depending on the grade of lumber) so-called stickers or pieces of wood are then placed on top of the course running in the same direction as the bottoms and at right angles to the course. The stickers are set at regularly spaced distances from each other to support the succeeding courses which are piled in the manner described. In building these piles, one man works on top of the pile and the other works on the ground; they alternate these positions while piling.

Thus the lumber is piled with stickers separating each course. To permit even greater air circulation, in square piling the pilers were also required to leave a space in the middle of the pile, called a chimney. This chimney takes the form of an inverted letter V, leaving a space of 14 inches at the widest point at the bottom of the pile and a space of 6 inches at the

top of the pile. The effect of this chimney is to divide the pile into two halves, each 16 feet long. If the chimney is not properly made, staining may result for lack of full air circulation.

In the so-called unit method of green piling, two pilers working as a team construct a pile 4 feet wide and 16 feet long. The same general procedure is followed with respect to the use of stickers as described above, except that in unit piling five stickers are used between each course. The stickers in unit piling are narrow strips of wood about 4 feet long. Properly placed, stickers are directly above one another so that upon a frontal view of the long side of the unit pile, the ends of the stickers make a vertical line, broken only by the alternate courses of lumber. The proper placement of stickers is important to prevent sagging or bowing of the lumber. To prevent staining, the stickers must be dry, not green like the lumber being piled. In constructing these unit piles, a crew member is on each long end of the pile. One of these men is called the "leader." The leader places two stickers on the course already laid and breaks the lumber while the other crewman is placing the three other stickers. In breaking the lumber, the leader loosens a piece of lumber from the load of green lumber for piling atop the stickers. The lead man is required to work more speedily than his partner because of the additional work entailed in the breaking operation. (Gassner was the leader of his crew.)

After the unit piles are constructed, a lift truck operator removes the piles and stacks several of

them on top of one another. The lumber remains in this fashion until it is dry. When dry, the lumber is removed to the Respondents' planing mill for planing and finishing preparatory to shipment. The square piles (16x16x8 feet), when dry also must be taken to the planing mill for similar processing. This removal of lumber in the square piles entails another operation known as dry loading.

Dry loading is done by a crew of two men. It involves tearing down and reloading the now dry lumber in the square piles. The crew member on top of the square pile causes the lumber, piece by piece, to be lowered to his partner on the ground below. The man on the ground loads this dry lumber on blocks, this time, however, without stickers between courses. After the lumber is dry loaded in this manner, it is transported to the planing mill by another employee operating a carrier, which is a motor vehicle especially designed for this purpose.

C. Other employment attributes of green piling and dry loading

Gassner and Christopherson were contract pilers, that is, their job was to build the square and unit piles of green lumber on a piecework basis. Employees doing this work are also called green pilers. Dry loading (the tearing down and reloading of square piles which have dried and are ready for planing) is generally performed as it was at the Respondents' operations on a day-labor basis for which an hourly rate is paid. (At other mills, dry

loading is sometimes done on a piecework basis, as well.)

The last work performed by Christopherson and Gassner, before their discharge, was dry loading on a day-labor basis. This dry loading is not one of the required duties of contract pilers; however, as an established industry-wide custom and practice, such work is generally made available to contract pilers when there is no green piling to be done. The reason for this, the record shows, is that the industry has considered it desirable to keep skilled green pilers on a company's payroll by giving them dry loading work when green piling is slack. The dry loading under such circumstances is considered as merely temporary work of the contract piler. The record also establishes, as an industry practice, that employees dry loading on a day-labor basis do not, and are not expected to, work as hard as employees similarly engaged on a contract or piecework basis.

D. Management Personnel

Since 1944, when the Respondents were rebuilding their plant which had been destroyed by fire, there has been a succession of managers in charge of plant operations. Victor Anderson was plant manager from 1945 until about May 1, 1948. Anderson was succeeded by V. V. Redman who occupied the position until early July 1948. Robert Dant, one of the Respondents and the managing partner of the enterprise, then took over the job until about August 1948, when he was succeeded by Percy Cook. Victor Clark, in turn, succeeded Cook early in December 1948, and

has been plant manager ever since. The Respondents' late attorney, Meinke, also participated in personnel matters at the plant during a strike in November and December 1948 and for a short period afterwards.

Dant, the managing partner, was not actively engaged in managing plant operations from 1945 to May 1947. During this period, according to his testimony, Dant may have visited the plant fewer than six times yearly for short periods at a time. These visits became more frequent later on, every 2 or 3 weeks, Dant testified, because of new construction work in the plant. Not until July 1948, as stated above, did he personally take over active management of plant operations, and then only for the short period indicated above.

Pilers work in the yard as do other categories of employees. The yard foreman from April 1948 until April 1949 was Pete Trautman. Floyd Parker, the present foreman, succeeded Trautman; he was foreman when Gassner and Christopherson were discharged. Edward F. Endikott, the office manager, testified that he also assisted Dant in supervising yard operations during the latter's short tenure as plant manager.

E. Labor relations: role of Gassner and Christopherson

Gassner was hired in December 1944 while the plant was still in process of reconstruction following the fire mentioned above. Early in 1945, Gassner solicited employees to join the Union, the employees

being unorganized at the time. By June 1945 a majority of the employees had designated the Union as their bargaining representative, and that same month the Respondents recognized and entered into a collective bargaining contract with the Union for all the Respondents' employees, including pilers. The parties have been in contractual relationship since that time.

Gassner was a member of the Union Standing Committee from June 1945 until June 1948, when he chose not to run again for that elective office. This Standing Committee represents the Union in its dealings with the Respondents in regard to grievances and contract negotiations. Christopherson was hired in May 1947; he became a committeeman the following month, holding the position until June or July 1948 when he declined further nomination, and again from Spring 1949 until his discharge. Parker also had been a member of the Standing Committee before becoming yard foreman.

The period immediately preceding the discharges was not one of harmonious labor relationships at the plant. According to Dant, 1948 was a year of constant crisis during which the Respondents were ever faced with threats of strike. Most of the complaints came from the pilers. It would serve no purpose to discuss each of the complaints or the disposition made of them, except to mention that on various occasions the men complained, among other things, that stickers were unavailable, thereby slowing down work and reducing the pilers' pay; that lumber was not properly sorted, thereby reducing production

and wages accordingly; that management failed to decide where lumber was to be piled, thereby causing the pilers to stand idly by and to suffer consequent loss in earnings; that the pilers were required to handle lumber twice, but received compensation for only one handling; that the Respondents reduced wages without first notifying the Union; etc. On one of these occasions in the fall of 1948, all the pilers walked off the job when management failed to decide where lumber should be piled. There was general employee strike from November 1 until December 8, 1948, in connection with a contract matter. It was Gassner who proposed this strike action at a union meeting in Parker's presence.

Not all the disputes or complaints were taken up as formal grievances by the Union Standing Committee; on some occasions the pilers themselves complained directly to management. The record establishes, however, that, whatever the manner by which the men expressed their complaint, whether through formal committee action or by other collective action, Gassner and Christopherson were in the forefront as spokesmen for the employees in these dealings with the Respondents and were so regarded by the Respondents.

This prominent role of Gassner and Christopherson in their presentation of, and other participation in, collective employee complaints and activities visited upon these two employees the animosity of the Respondents. On various occasions of such complaints, the succession of management representatives, after Anderson had left, expressed a desire to

get rid of both men. For example, Manager Redman stated in July 1948 that "we would be better off * * * if we got rid of you." Manager Cook stated, on the occasion of the afore-mentioned walkout by the pilers, that the Company would be better off with Gassner or Christopherson; Cook singled out Christopherson and Gassner from all employees who walked out, stating, in effect, that he would fire both of them if such incident recurred. While negotiating the strike settlement in December 1948, Attorney Meinke said that Dant didn't want to take back some of the pilers. In Spring 1949, during Clark's managership, Foreman Parker stated on the occasion of a complaint, that two pilers—referring to Gassner and Christopherson—were going to be without jobs. And a day or two before discharging Gassner and Christopherson, Parker told some of the employees that Dant would give Parker $25 to get rid of both men and would bet $50 that he, Parker, couldn't get rid of them. (I do not credit Parker's different version of this matter. I consider his testimony on disputed matters to be unreliable.)

F. The discharges

Three regular contract pilers, including Christopherson and Gassner, went on vacation on July 1, 1949. They chose that time for vacation because no green lumber was coming in. When leaving that day, Gassner repeated a request to Foreman Parker for a man to replace his crew partner, Slim Erickson, who had been injured several weeks before. Since the injury, members of a spare piling crew rotated with

Gassner, the result being that all regular contract pilers suffered a loss in earnings because of their established practice of pooling their earnings. In any event, when Gassner told Parker on July 1 that he wanted a regular partner upon his return from vacation, Parker stated "I wouldn't be too sure about that."

Christopherson returned to the mill on July 12, 1949, to find the shortage of green lumber still continuing. He inquired of Parker whether any other type of work was available, to which Parker replied that there was some dry loading to be done. Christopherson then called Gassner, who was still on vacation, to work with him, and they reported for work the following morning, July 13.

On July 13, 14, and 15, Gassner and Christopherson dry loaded for a total period of 20¼ hours, and worked at green piling for the remaining 3¾ hours.

July 15 was a Friday. When the men reported for work the following Monday, Parker advised them that they were fired for loafing on the job on July 13, 14, and 15. Parker testified, in effect, that both men had loafed on the 3 days in question and that on July 14 he decided to discharge them for that reason; that he discussed the matter with Manager Clark on July 15 because of uncertainty as to his power of discharge; and that Clark concurred in his recommendation and instructed Parker to discharge the men. Although Parker stated at one point that he did not overlook this alleged loafing of Gassner and Christopherson because of previous unsatis-

factory work, he testified that when he decided to discharge the men, he did not have these alleged previous deficiencies in mind; that in his discussion with Clark, he mentioned only the afore-mentioned loafing as the reason for the discharges; that the discharges were made solely because of loafing on the 3 days; and that such loafing was the only reason he (Parker) gave the men on July 18, when he discharged them. Parker, moreover, made a statement to similar effect on August 16, 1949.

Clark testified that Gassner and Christopherson were discharged "only because of what took place on those [3] days," and the record further shows that this was the sole reason alleged by the Respondents at the aforementioned grievance meetings on the discharges.

G. Other reasons alleged by the Respondents for discharges

Despite the testimony of Clark and Parker as to their alleged reason for discharging Gassner and Christopherson and notwithstanding the Respondents' stated position on the matter at the grievance meetings, the Respondents' answer of May 1950 avers, and at the hearing they attempted to show, that the discharges were also made for reasons relating to the work performance of both employees during the period before July 1, including, among other things, that they used green stickers instead of dry stickers, that they improperly placed stickers while piling, that they constructed irregular chimneys, that they arrived late at work and left their work before

regular quitting time while there was green lumber still to be piled, that they refused to pile lumber of narrow widths, etc.,—all of which, according to the Respondents, constituted insubordination and caused lumber to be stained, with financial loss to the Respondents.

There would appear to be no question at all in this posture of the case, on the basis of the Respondents' own testimony, that these other proffered reasons were not considerations upon which the discharges were made, and that they are, therefore, irrelevant to the issue. However, I shall summarize the evidence relating to them, before considering more fully the events of July 13, 14, and 15.

During 1948 there were approximately six pilers, working as already indicated, in teams of two. The composition of these crews was fairly permanent; thus, Gassner's regular partner was Erickson from 1944 until June 1949, and Mike Gassner (not to be confused with Max Gassner, the alleged discriminatee) was Christopherson's regular partner from October 1948 until the latter's discharge in July 1949. Until the 3 days under consideration, Gassner and Christopherson had worked together as a team only during emergencies, for a total period of approximately 3 days, not more than a day each time.

The record shows that the Respondents themselves had complained, but only generally as to all pilers and not as to Christopherson and Gassner in particular, concerning faulty piling, including the use of green stickers, the improper alignment of stickers, and irregular construction of chimneys. The record

establishes, however, that because men worked together as teams, it was fairly difficult, if not impossible, to determine whether one or both members of a team were at fault in a particular operation, and if only one, to identify which employee; it appears, moreover, that the stickers may also be displaced, in the case of unit piling, by the manner in which the piles were transported and stacked by the lift truck operators. Although the Respondents' proof covered the entire periods of employment of both Gassner and Christopherson, the Respondents were able to show as to either of them only that the entire team of Erickson (who is still in the Respondents' employ) and Gassner had specifically been criticized on occasion in regard to their piling. Parker testified that there had been no evidence of staining during the period of his foremanship, at least until the discharges here in question; and as to the use of green stickers, the record contains no instance where either Gassner or Christopherson were personally criticized in this respect. The record establishes, in regard to the matter of late arrivals and early departures that Christopherson and Gassner arrived at the same time as Mike Gassner (who is still in the Respondents' employ) and that all pilers, as contract workers, customarily left work before the day workers in accordance with the industry practice to this effect; and while Trautman testified that all pilers left early on occasions when green piling still remained, Parker testified that on no occasion during his foremanship did the pilers leave early without permission with uncompleted work behind; in any event, Chris-

topherson and Gassner quit work when the other pilers did and had never been criticized on this score. Dant testified that on one occasion in or about June 1948, Gassner and his partner quit work early; however, Dant further testified that Gassner allegedly did so because of a sore arm.

Concerning the Respondents claim that both men piled wider lumber rather than narrower lumber, the record shows as follows: Because of the piecework method of paying contract pilers, pilers were able to make more money piling greater widths of lumber and, in the industry generally, pilers accordingly pile wider lumber when it is available. This had been the practice of all the Respondents' green pilers. Moreover, the record contains no instance where either Christopherson or Gassner had refused to handle lumber which they had been ordered to pile.

The record further shows that both Gassner and Christopherson were competent and industrious workmen, at the very least, and Parker admitted that during the entire period of his foremanship he had no occasion to criticize the specific work performance of Christopherson or Gassner in any respect.

H. July 13, 14, and 15

Parker testified that on these 3 days, Christopherson and Gassner reported for work on time, but that they were late in actually beginning to work; that frequently and for protracted periods during these days, they wasted time in their car; that they didn't exert themselves while they were working; that several employees, all unidentified except a truck

driver named Congers, told him on the morning of July 13 that other employees would be discharged if they loafed the way Christopherson and Gassner were doing (Conger credibly denied making this statement); that at the time of the discharges he believed both men had dry loaded about 53,000 feet of lumber during the 20¼ hour period, although he later learned the amount to be 48,000 feet; and that this amount—presumably the 53,000-foot figure, for it was on the basis of this amount that he allegedly made or recommended the discharge—was unreasonably small output for the period in question. Parker admitted that not once during this entire 3-day period did he criticize the men concerning their work, or otherwise advise them that he was dissatisfied with the manner of their performance.

The General Counsel, on the other hand, adduced testimony to the effect that Gassner and Christopherson began to work shortly after reporting; that they dry loaded approximately 50,000 feet during the period in question, and that this was the figure agreed upon by all parties at the grievance meetings mentioned above; that they were slowed down somewhat because of the 100 degree temperature those days; that they took their regular morning and afternoon rest periods; that they carried their own drinking water with them and, occasionally during the day, obtained such water at their car where with the Respondents' permission the water was kept; and that their output on these days also was reduced because the lumber they were handling contained miscuts and wood of random sizes, and because the lumber

had been standing for a long time and contained much dust and therefore particularly difficult to handle in view of the hot weather at the time. The General Counsel conceded that the men did not work as hard as they might have on contract basis, but he contended that the amount of their production was wholly reasonable, considering all the foregoing circumstances including the fact that the men were contract pilers working at day-labor rates.

The record shows that the lumber handled by the men on the 3 days in question was of various lengths, widths, and thicknesses; that some of it was not edged, that is, the bark had not been removed; and that it contained miscuts as well, which is wood of one thickness at one end and another thickness at the other. This random sized and wedged lumber is much slower in loading than regularly cut wood of similar size. The Respondents did not deny the testimony concerning the high temperature on the 3 days, and the record also shows that the lumber had, in fact, been standing and accumulating dust in the yard since it had been piled the year before. On the basis of the entire record, I find that the men dry loaded approximately 50,000 feet during the 3-day period. (This also is the figure given by Parker in a statement he made in August 1949.) And as they spent 20¼ hours in dry loading and 3¾ hours in green piling during this period, I find that the average amount of lumber dry loaded by the men on an 8-hour daily basis exclusively devoted to dry loading was approximately 19,750 feet. On the basis of

53,000 feet, the amount Parker believed they had loaded when he discharged the men, the average daily output would be approximately 20,930 feet; and on the basis of Parker's alleged actual amount of 48,000 feet, the average daily amount would be approximately 18,960 feet. The small differences between these various amounts are not, in any event, dispositive of this case in my opinion.

The record contains a wide range of estimates of what is a reasonable amount of dry loading to be done by a crew of men working on a day-labor basis. (It is recalled in this connection, that day laborers do not and are not expected to work as hard as employees engaged in dry loading on a contract or piecework basis.) These estimates range from 30,000 feet to 11,200 feet; however, these figures were not based on lumber containing miscuts, the presence of which would materially lessen the output, as the record shows. In fact, one witness testified that, for this reason, men are paid a double wage scale when dry loading miscuts on a contract basis at another mill in the vicinity of the Respondents' operations. The record further shows that the Respondents had no prescribed standard as to the amount of lumber a dry loader on a day-labor basis was expected to handle. Upon all the foregoing and upon the entire record, I conclude that Christopherson and Gassner dry loaded a reasonable amount of lumber on the 3 days in question.

Tim Sullivan, president of the Klamath Basin District Council, IWA, CIO, testified that his union jurisdiction includes nine local unions and covers

the geographical area from McCloud, California, to Heppner, Oregon, and that he has occupied this office since 1941, except during a period of wartime military service. He stated that all grievances arising out of discharge cases under his jurisdiction come to his attention and that during his entire term of office no contract piler has ever been discharged because of the manner of performing temporary dry loading work. Sullivan also testified that the practice of the industry is not to discharge an employee without first warning the employee and his union, neither of which was done in this case.

Conclusions

Upon the basis of the entire record in this case, I believe that the Respondents did not discharge Gassner and Christopherson for loafing on the job on July 13, 14, 15. These employees, proficient at a job which the industry itself considered deserving of particular consideration, had performed their work competently and industriously for respective periods of 4½ and 2 years without receiving any warning concerning the performance of their job. In the meantime, they had been active in union affairs; together they were principal spokesmen in representing the employees, particularly the pilers, in concerted activities respecting wages and other general conditions of employment. Christopherson and Gassner incurred the Respondents' displeasure by such representation and, at various times in 1948 and 1949, the Respondents indicated a desire to get

rid of them, the last such indication only a few days before the discharge.

There is no question that the Act protects the right of employees to act concertedly in presenting complaints and grievances regarding their terms and conditions of employment. It also is true, that recognizing and bargaining with the statutory representative does not relieve an employer from his other obligations under the Act and give him carte blanche to rid himself of the spokesmen in such matters.

Returning to the factual summary, however, we find Christopherson and Gassner temporarily engaged in dry loading. They perform this work for 3 days, without receiving any criticism or word of caution that management considers their performance to be unsatisfactory. Their output is reasonable for these 3 days, particularly in view of the kind of lumber they were handling, the high temperature, the fact that they were then engaged in day labor, and also the special industry considerations applicable to green pilers engaged in temporary dry loading on a day-labor basis. In addition to the departure from the established labor relations practice in the industry which the discharges involved, as indicated above, there is further to be considered the matter of shifting reasons for the discharges. Despite the testimony of Clark and Parker, and Parker's August, 1949 statement, as to the cause of the discharges; despite the position of the Respondents at the grievance meetings; despite the reason assigned Christopherson and Gassner at the time of the discharges

—despite all this, the Respondents now contend that earlier conduct of both men entered into the decision to discharge them and that the events of July 13, 14, and 15 were merely the final straw. Under the circumstances, this assertion of such newly discovered reasons fortifies the conclusion that the Respondents are attempting to conceal their actual motivation; and the Respondents' already untenable position becomes weaker still when it appears that this additional broadside criticism of both men is itself without substantial record support. However, even if the record supported the criticism of the past performance of Gassner and Christopherson, such evidence would be irrelevant to the case, as the testimony of Clark and Parker demonstrates.

I conclude upon a preponderance of the evidence that the Respondents did not discharge Christopherson and Gassner because of their performance on July 13, 14, and 15; I find, rather, that the Respondents discharged these employees because of their preeminent advocacy of matters relating to the Union and in connection with other concerted activities of employees which the Act protects. The Respondents thereby discriminated in regard to their hire and tenure of employment, discouraging membership in the Union, and by such conduct, the Respondents also interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act. This conduct violates Section 8(a)(3) and 8(a)(1) of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondents set forth in Section III, above, occurring in connection with the operations described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

In order to effectuate the policies of the Act, I shall recommend that the Respondents cease and desist from the unfair labor practices in which they have engaged. I also shall recommend that the Respondents offer reinstatement to Gassner and Christopherson and make each of them whole for any loss of pay they may have suffered by reason of the Respondents' discrimination against them, by payment to each of them of a sum of money equal to the amount he would normally have earned as wages from the date of his discharge (July 18, 1949) to the date of a proper offer of reinstatement, less his net interim earnings. The back pay shall be computed on a quarterly basis in the manner established by the Board, and the Respondents shall make such records available in this connection as is hereinafter provided. F. W. Woolworth Company, 90 NLRB No. 41.

In view of the nature of the unfair labor practices committed, I shall also recommend, in order to make effective the interdependent guarantees of

Section 7 of the Act, that the Respondents cease and desist from in any other manner infringing upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. International Woodworkers of America, Local 6-7, is a labor organization within the meaning of Section 2(5) of the Act.

2. The Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of facts and conclusions of law, I recommend that Thomas W. Dant, Robert E. Dant (individually and as guardian for Diana Kerr and Daphne Kerr), John R. Dant, Eleanor C. Dant, Mary B. Dant, R. J. Darling, E. S. Goodell, Mrs. Mary Goodell, Glen W. Cheney, and Dorothy D. McNary, co-partners d/b/a Dant & Russell, Ltd., Redmond, Oregon, individually and as co-partners, and their agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Woodworkers of America, Local 6-7, or in any other

labor organization of their employees, by discharging or refusing to reinstate any of their employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment;

(b) In any other manner, interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Woodworkers of America, Local 6-7, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the p pose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Offer to Max Gassner and Henry J. Christopherson immediate and full reinstatement to their former or a substantially equivalent position, without prejudice to their seniority or other rights and privileges;

(b) Make whole Max Gassner and Henry J. Christopherson in the manner set forth in the section entitled "The remedy" for any loss of pay they may have suffered by reason of the Respondents' discrimination against them;

(c) Upon request, make available to the Board

or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Recommended Order;

(d) Post at their operations at Redmond, Oregon, copies of the notice attached hereto, marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Nineteenth Region, after being signed by a representative of the Respondents, shall be posted by the Respondents, immediately upon receipt thereof, and maintained by them for sixty (60) consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Nineteenth Region, in writing, within twenty (20) days from the receipt of this Intermediate Report and Recommended Order what steps the Respondents have taken to comply herewith.

I also recommend that unless the Respondents notify said Regional Director, in writing, within twenty (20) days from the receipt of this Intermediate Report and Recommended Order that it will comply with the foregoing recommendations, the Board shall issue an order requiring the Respondents to take the aforesaid action.

As provided in Section 203.46 of the Rules and

Regulations of the National Labor Relations Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations,

the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 28th day of August, 1950.

/s/ RALPH WINKLER,
Trial Examiner.

APPENDIX A

Notice of All Employees Pursuant to The Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership in International Woodworkers of America, Local 6-7, or any other labor organization of our employees, by discharging any of our employees, or in any other manner discriminating as to their hire and tenure of employment or any term or condition of employment.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Woodworkers of America, Local 6-7, or any other labor organiza-

tion, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

We Will offer to Max Gassner and Henry J. Christopherson immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed; and we will make them whole for loss of pay suffered as the result of the discrimination against them.

All our employees are free to become or remain members of the above-named union or any other labor organization.

DANT & RUSSELL, LTD.,
Employer.

By .....
(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

EXCEPTIONS TO INTERMEDIATE REPORT

Respondents, Dant & Russell, Ltd., take exception to the Intermediate Report in the above case as follows:

1. To the Intermediate Report in its entirety.

2. To the action of the Examiner in dismissing the preliminary motions for dismissal made by Respondents. (Rep. p. 2, 3, and 4, under III A, the Pleadings and preliminary motions.)

3. To the following Findings of Fact by the Examiner in the order in which they appear in the Intermediate Report:

1. The finding that "Gassner was the leader of his crew" (Rep. p. 5, L. 20) for the reason that it is highly prejudicial to someone not familiar with all the circumstances. It was Gassner's own testimony (p. 570, L. 6 Tr.). He was not a foreman. He was part of a two man crew and by "leader" was meant merely that he was the first to lift the board being piled.

2. To the Examiner's findings (Rep. p. 5, L. 53 to and including p. 6, L. 3) regarding the claimants' manner of performance of their work just prior to the discharge. The Examiner, in effect, assumes as true the ridiculous testimony of the Local Union President (Tr. p. 514, L. 1 to 3 inclusive) that the men were practically on a "pension" when doing this day labor work, ignoring entirely the basic

proposition that a day's work is still supposed to be an honest day's work.

3. To the Examiner's failure to find that the Respondents had had contractual relationship with this same Union from 1938 to 1944, when the Respondent's plant was destroyed by fire, and again from 1945, when Respondent's plant resumed operations. (Tr. p. 609, L. 11.) The Examiner mentions only a contractual relationship with the Union since 1945. (Rep. p. 6, L. 44.)

4. To the Examiner's failure to find that the organization of the Respondent's plant had been peaceful, both in 1938 and 1945 (Tr. p. 610, L. 2), and that the overall relations between the Union and the Respondents had been peaceful and conciliatory except for one strike in the winter of 1948.

5. To the Examiner's finding that the Union Standing Committee represents the Union in regard to "contract negotiations." (Rep. p. 6, L. 49.) The Respondents and the Union follow the industry-wide pattern with respect to contract provisions and wage increases. (Tr. L. 3 to 24 inclusive, p. 656, and L. 11, p. 249.)

6. To the Examiner's failure to find that all the alleged grievances or complaints of the Union (Rep. L. 3 to L. 12 inclusive, p. 7), were either settled or disposed of to the satisfaction of everyone concerned (Tr. p. 340, L. 1-13); that most of the alleged complaints mentioned by the examiner were alleged to have been made many months and, in most cases, almost a year, prior to the discharges involved here; that most of the alleged complaints were regarded

by one of the complainants himself as trivial. (L. 12, p. 191, Tr.)

7. To the Examiner's finding that "on various occasions the men complained, among other things, that stickers were unavailable thereby slowing down work and reducing the pilers' pay" (Rep. p. 7, L. 2-4), thereby leaving the impression that this was a legitimate grievance, whereas the availability of the stickers was the responsibility of the pilers themselves as was brought out by the Examiner's own questions. This alleged "complaint" occurred at least 9 months prior to the discharge. (Tr. p. 696, L. 23 to p. 697, L. 17.) This type of "complaint" demonstrates that the men were malcontents and yet is used by the Examiner in an attempt to justify his conclusion that the men were engaged in Union activities.

8. To the Examiner's finding that "the men complained * * *; that lumber was not properly sorted, thereby reducing production and wages accordingly," (Rep. p. 7, L. 4) leaving the impression again that this was a "complaint" relevant to the immediate situation, whereas it apparently refers to a matter which occurred in the Spring of 1948, more than a year before the discharges and was settled to the complainants' satisfaction. (Tr. p. 193, L. 18 to L. 1, p. 196.)

9. To Examiner's finding that "the men complained * * *; that management failed to decide where lumber was to be piled, thereby causing the pilers to stand idly by and to suffer consequent loss

in earnings", (Rep. p. 7, L. 6), creating the impression again that the "complaint" was legitimate, when it was actually no complaint at all. On at least one occasion, the pilers had left the job in the morning without permission and did not return and were told the next day by the manager that they would be discharged if they did such a thing again. Despite the circumstances, the General Counsel attempted to use this as evidence of management's desire to be rid of the complainants and the complainants propounded the alibi that they left work because they had not been told where to pile the lumber. (Tr. p. 198, L. 13 to p. 199, L. 10.) The complainants' "complaint" was ridiculous as well as remote from the time of discharge. (Tr. p. 617, L. 15 to p. 618, L. 5.)

Exception is also taken to the following Examiner's finding, because it refers to the same instance as above: "On one of these occasions in the Fall of 1948, all of the pilers walked off the job when management failed to decide where lumber should be piled." (Rep. p. 7, L. 10.)

10. To the Examiner's finding that "the men complained * * *; * * * that the pilers were required to handle lumber twice, but received compensation for only one handling", (Rep. p. 7, L. 7) creating the impression again that this was a legitimate, continuing and current "complaint". As a matter of fact, the Examiner's finding is based on a situation, the explanation of which is not clear, and which allegedly existed in the Spring of 1948, more than a year prior to the discharges, and was corrected to the witness'

satisfaction in the Spring of 1948. (Tr. p. 543, L. 3 to p. 544, L. 13.)

11. To the Examiner's finding that "this prominent role of Gassner and Christopherson in the presentation of, and other participation in, collective employee complaints and activities visited upon these two employees the animosity of the Respondents. (Rep. p. 7, L. 25.) The Examiner concludes that any move, any statement, any request, in fact, anything done by the complainants was collective activity. It does not occur to the Examiner that the complainants were malcontents, which even their demeanor on the witness stand revealed. There is no basis for such a conclusion, as is shown in the exception below, where the alleged statements are discussed. The Examiner thus unfairly concludes there was animosity on the part of the Respondents by reason of certain alleged statements of management representatives.

12. To the Examiner's finding that "On various occasions of such complaints, the succession of management representatives, after Anderson had left, expressed a desire to get rid of both men" (Rep. p. 7, L. 28), which creates the impression again that all the so-called "complaints" mentioned by the Examiner were legitimate complaints, and which gives no credence to testimony of even the complainants and their witnesses that all alleged statements, brought by the complainants as proof of management's desire to rid itself of the complainants, were made, if at all, on the occasion of the complainants' failure to carry out their responsibilities as em-

ployees. The Examiner cites specific statements of management representatives as the reason for his conclusion. The Examiner has taken all the alleged statements out of context. He has ignored the true reasons for the statements and assumes that all the alleged statements were made as a result of the complainants' Union activities. Because the Examiner has relied heavily upon these alleged statements in making his Report, an analysis of them is needed.

The first statement cited (Rep. p. 7, L. 30) as having been made by Manager Redman in July 1948, was probably not made at all. There is much confusing testimony by the General Counsel's witnesses concerning the above alleged statement of Redman, and another alleged statement of Manager Cook. (Rep. p. 7, L. 31.) A study of all the testimony pertaining to alleged statements of Redman and Cook warrants the conclusion that no such statement was made by Redman as is attributed to him by the Examiner; but that Cook made a statement which was provoked by the pilers leaving the job without permission before noon. The Examiner's version of Cook's statement (Rep. p. 7, L. 3) is another aspect of an earlier finding of the Examiner (Rep. p. 7, L. 6) to which exception was taken in Paragraph 9 above. There is an attempt by the Examiner as there was by the General Counsel to maintain that Cook's statement pertained specifically to the complainants, but the testimony does not bear them out. (Tr. Christopherson's testimony, p. 199, L. 2-10; p. 256, L. 22 to p. 258, L. 9; p. 262, L. 8 to p. 263, L. 19.) The Red-

man statement is alleged to have been made because Christopherson was taking up too much work time discussing Bishop's discharge. (Tr. Pivinski, p. 136, L. 8 to L. 18.) The Bishop discharge was during Cook's managership, however. (Tr. Christopherson p. 197, L. 8 to 16.) For further study of all the General Counsel's testimony pertaining to the alleged Cook or Redman statements, see testimony of Pivinski. (Tr. p. 134, L. 3 to p. 139, L. 5 and p. 153, L. 16 to p. 154, L. 2); testimony of Kramer (Tr. p. 158, L. 12 to p. 161, L. 9 and p. 171, L. 6 to p. 175, L. 2 and p. 176, L. 22 to p. 177, L. 11); testimony of Christopherson (Tr. p. 198, L. 7 to p. 199, L. 16 and p. 256, L. 6 to p. 263, L. 19); testimony of Max Gassner (Tr. p. 544, L. 13 to p. 547, L. 11 and p. 583, L. 19 to L. 23). Exception is taken to the use of these alleged statements of Managers Cook and Redman for the further reasons that any statements made by either of these managers are too remote to be considered, Redman having departed from the mill in July, 1948, and Cook in the Fall of 1948; and that the alleged statements are hearsay and should not have been admitted to evidence.

The Examiner's reporting of an alleged statement by Attorney Meinke, now deceased (Rep. p. 7, L. 35), is, excepted to because it is hearsay and because it applies to pilers generally and not the complainants specifically. (See Fordham testimony, Tr. p. 451, L. 5 to p. 452, L. 4.)

The statement by the Examiner that "Foreman Parker stated on the occasion of a complaint, that

two pilers—referring to Gassner and Christopherson —were going to be without jobs", (Rep. p. 7, L. 42) is excepted to as a mis-statement of the facts. The statement to which he refers is apparently Max Gassner's testimony, (Tr. p. 467, L. 24 and 25) "There's going to be a couple of pilers going down the road talking to themselves" which may or may not have referred to the complainants and which may have meant most anything.

The alleged statements of Parker pertaining to $25.00 and $50.00 (Rep. p. 7, L. 40) were explained by Parker but the Examiner, in an arbitrary way, states that he does not credit Parker's version. (Tr. p. 56, L. 7 to 17.) Parker's testimony (Tr. p. 19, L. 14 and 15, p. 19, L. 23, 24 and 25 and p. 20, L. 1 and 2) demonstrates that the work of the complainants had not been satisfactory to him and as a consequence, he expressed the opinion that the employer would be better off without inefficient workmen, as any employer would be, and as any foreman might say.

13. To the finding that the pilers suffered a loss of earnings when there were five pilers instead of six (Rep. p. 7, L. 49 to 59) and to the finding that the pilers had a conversation regarding the matter with Parker. The conversation was with Clark, the Plant Manager (Tr. Max Gassner testimony p. 555, L. 6 to 22). It should be noted that the complainants did not consider this matter important enough to take up as a grievance, nor were there complaints by any of the other pilers regarding it. (Tr. Max Gassner testimony p. 584; L. 19 and 20.)

14. To the finding that the previous unsatisfac-

tory work of the complainants had not entered into the reason for discharge. (Rep. p. 8, L. 50.) The testimony of Foreman Parker belies that finding. (Tr. p. 19, L. 14 to p. 20, L. 3.)

15. To the finding that neither "Gassner or Christopherson had refused to handle lumber which they had been ordered to pile." (Rep. p. 9, L. 45.) The testimony of Troutman, a yard foreman, reveals instances of insubordination, (Tr. p. 700, L. 9 et seq.) as well as the testimony of Foreman Parker (Tr. p. 27, L. 17 to p. 30, L. 7).

16. To the finding that "both Gassner and Christopherson were competent and industrious workmen, at the very least", (Rep. p. 9, L. 49) for the reason that there was no testimony to that effect. The testimony of their fellow workmen was along the lines of the following from Pivinski, "better than a few of them I worked with". (Tr. p. 131, L. 7.)

17. To the finding that Foreman Parker "had no occasion to criticize the specific work performance of Christopherson and Gassner in any respect", (Rep. p. 9, L. 5) which is completely false as shown by Parker's testimony. (Tr. p. 20.)

18. To the finding that Conger, a witness for the General Counsel "credibly denied" making a statement to Parker to the effect that the complainants' loafing would ordinarily cause an employee to be discharged. Adding the word "credibly" to Conger's testimony is a travesty on the truth of the situation. The Examiner himself had difficulty in trying to get Conger to answer certain questions. (Tr. p. 366, L. 3 et seq.)

19. To the following finding: "Parker admitted that not once during this entire three day period did he criticize the men concerning their work, or otherwise advise them that he was dissatisfied with the manner of their performance." Parker, on the contrary, talked with the complainants on the job during the three days and asked them "why they were not working." (Tr. p. 60, L. 25.)

20. To the finding that there was "100 degree temperature those days". (Rep. p. 10, L. 19.) That was a guess of one of the complainants but the official weather report for that time and place is considerably lower.

21. To the finding that "Christopherson and Gassner dry loaded a reasonable amount of lumber on the 3 days in question." (Rep. p. 11, L. 8.) Six thousand board feet of this very same lumber had been "torn down" the day before the complainants began tearing it down. The six thousand board feet were "torn down" in one and a half hours, (Tr. p. 737) and yet the complainants used twenty and one-fourth hours to "tear down" approximately 50,000 board feet.

22. To the finding that neither the Union nor employees had warning in this case. (Rep. p. 11, L. 19.) There are many instances of the complainants being warned of their delinquencies. (Tr. p. 610, L. 16; p. 617, L. 3; p. 636, L. 13; p. 639, L. 20; p. 685, L. 22; p. 686, L. 3.)

23. To the finding that these employees were "proficient" and "performed their work competently and industriously" (Rep. p. 11, L. 27 and 29), for

the reason that there is absolutely not one iota of evidence to that effect throughout the entire testimony, but it is the ill considered finding of an Examiner anxious to justify his decision. Had these men been so competent, proficient and industrious as the Examiner would have us believe, it seems that these men should have been able to secure jobs as contract lumber pilers after their discharge; particularly when the lumber industry is "booming" as it is, but the men stated that they were now handymen at another lumber yard. (Tr. p. 109, L. 5 and p. 535, L. 18.)

24. To the following finding: (Rep. p. 12, L. 13 through L. 13) "I conclude upon a preponderance of the evidence that the Respondents did not discharge Christopherson and Gassner because of their performanee on July 13, 14, and 15; I find, rather, that the Respondents discharged these employees because of their preeminent advocacy of matters relating to the Union and in connection with other concerted activities of employees which the Act protects. The Respondents thereby discriminated in regard to their hire and tenure of employment, discouraging membership in the Union, and by such conduct, the Respondents also interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act. This conduct violates Section 8(a)(3) and 8(a)(1) of the Act."

There is no preponderance of evidence that these men were discharged because of Union Activities. Assuming as true all the General Counsel's witnesses' testimony, a finding of discharge for Union activities

would still be based on suspicion alone.

There is no evidence whatsoever that the Respondents have, by these discharges, discouraged membership in the Union. Nor is there any evidence that by these discharges, the Respondents restrained or coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

Respectfully submitted,

/s/ J. P. STIRLING,
Attorney for Respondents.

Postal Return Receipts attached.

United States of America
Before the National Labor Relations Board
Case No. 36-CA-100

In the Matter of

THOMAS W. DANT, ROBERT E. DANT (individually and as guardian for DIANA KERR AND DAPHNE KERR), JOHN R. DANT, ELEANOR C. DANT, MARY B. DANT, R. J. DARLING, E. S. GOODELL, MRS. MARY GOODELL, GLEN W. CHENEY, AND DOROTHY D. McNARY, co-partners dba DANT & RUSSELL, LTD.

and

INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 6-7.

DECISION AND ORDER

On August 28, 1950, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-

entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief.

The Board[1] has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and supporting brief, and the entire record in the case, and hereby adopts the findings,[2] conclusions and recommendations of the Trial Examiner.

We agree with the Trial Examiner's finding that the Respondents discharged employees Max Gassner and Henry J. Christopherson because of their prominent role in the presentation and prosecution of collective employee grievances against the Respondents. As we have heretofore held, the type of activities

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[1] Pursuant to the provisions of Section 3 (b) of the Act, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-member panel.

[2] The Trial Examiner erroneously stated that before leaving the plant on his vacation, Max Gassner requested Foreman Parker to replace his crew partner. The record shows, however, and we find, that Max Gassner addressed such request to Plant Manager Clark rather than to Foreman Parker.

engaged in by Gassner and Christopherson in the plant are clearly protected under the Act and a discharge for engaging in such activities not only violates Section 8 (a) (1), but also discourages membership in a labor organization in violation of Section 8 (a) (3).[3] Moreover, whether the discharges of Gassner and Christopherson be regarded as violative of Section 8 (a) (1) or Section 8 (a) (3) of the Act, we find it necessary to order them reinstated with back pay, as hereinafter provided, in order to effectuate the policies of the Act.[4]

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Thomas W. Dant, Robert E. Dant (individually and as guardian for Diana Kerr and Daphne Kerr), John R. Dant, Eleanor C. Dant, Mary B. Dant, R. J. Darling, E. S. Goodell, Mrs. Mary Goodell, Glen W. Cheney, and Dorothy D. McNary, co-partners dba Dant & Russell, Ltd., Redmond, Oregon, individually and as co-partners, and their agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Woodworkers of America, Local 6-7, or in any other labor organization of their employees, by discharg-

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[3] Kallaher and Mee, Inc., 87 NLRB No. 61; The Sandy Hill Iron & Brass Works, 55 NLRB 1, enf'd 145 F. 2d 631 (CA-2).

[4] See cases cited in footnote 3, supra.

ing or refusing to reinstate any of their employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment;

(b) In any other manner, interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Woodworkers of America, Local 6-7, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Max Gassner and Henry J. Christopherson immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges;

(b) Make whole Max Gassner and Henry J. Christopherson in the manner set forth in the section of the Intermediate Report entitled "The remedy" for any loss of pay they may have suffered by reason of the Respondents' discrimination against them;

(c) Upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Order;

(d) Post at their operations at Redmond, Oregon, copies of the notice attached hereto, and marked Appendix A.[5] Copies of said notice to be furnished by the Regional Director for the Nineteenth Region, after being signed by a representative of the Respondents, shall be posted by the Respondents immediately upon receipt thereof, and maintained by them for sixty (60) consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Nineteenth Region in writing, within ten (10) days from the date of this Order what steps the Respondents have taken to comply herewith.

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[5] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted in the notice before the words "A Decision and Order" the words, "A Decree of the United States Court of Appeals Enforcing."

Signed at Washington, D. C., this 29th day of November, 1950.

PAUL M. HERZOG,
Chairman

ABE MURDOCK,
Member

PAUL L. STYLES,
Member

[Seal] NATIONAL LABOR
RELATIONS BOARD.

APPENDIX A

Notice to All Employees
Pursuant to
A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not discourage membership in International Woodworkers of America Local 6-7, or any other labor organization of our employees, by discharging any of our employees, or in any other manner discriminating as to their hire and tenure of employment or any term or condition of employment.

We will not in any other manner interfere with, restrain, or coerce our employees in the exercise

of the right to self-organization, to form labor organizations, to join or assist International Woodworkers of America, Local 6-7, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

We will offer to Max Gassner and Henry J. Christopherson immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed; and we will make them whole for loss of pay suffered as the result of the discrimination against them.

All our employees are free to become or remain members of the above-named union or any other labor organization.

DANT & RUSSELL, LTD.
(Employer.)

Dated

By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Affidavit of Service attached.

[Title of Board and Cause.]

MOTION FOR RECONSIDERATION OF DECISION AND ORDER

Now come the Respondents, Thomas W. Dant, Ltd., et al., and through their attorneys respectfully move the National Labor Relations Board, in its entirety, to reconsider its order and decision in the above-entitled case, and to grant a hearing thereon before the entire Board.

As reasons therefor, it is respectfully submitted:

1. That the Board lacked jurisdiction to proceed with the case in contravention of Section 9(h) of the National Labor Relations Act, as amended;

2. That serious errors of law were committed by the Trial Examiner and the Board's Panel in their use of and reliance upon uncoercive and "privileged" statements by management as "evidence" of unfair labor practices on the part of management in contravention of Section 8(c) of the Act;

3. That the findings and conclusions of the Examiner and the Panel were not supported by substantial evidence on the record as a whole;

4. That the Examiner and the Panel erred in failing to find that the record as a whole established beyond any reasonable doubt that the discharges in this case were for good cause and not for activities protected by the National Labor Relations Act, as amended;

5. That the Examiner and the Board's Panel committed further error in drawing inferences of bad faith on the part of Respondents because their formal answer to the Board's complaint asserted reasons for the discharges in addition to the reasons stated at the time the discharges occurred;

6. That the Examiner and the Board's Panel erred in drawing the unsupportable inference from the record that because of the Gassner and Christopherson discharges, employees of the Respondents were coerced and restrained in the exercise of the rights guaranteed to them by Section 7 of the Act;

7. That the Examiner and the Panel erred in failing to find that Gassner and Christopherson, when conferring with representatives of the Respondents on union matters, were regularly and consistently accorded courteous treatment, and always had the problems they presented considered on their merits and adjusted to their apparent satisfaction;

8. That the Examiner and the Panel erred in failing to find that Gassner and Christopherson were never intimidated, coerced or restrained for engaging in activities falling under the protection of the National Labor Relations Act, as amended.

Respectfully submitted,

/s/ R. S. SMETHURST

/s/ R. S. HASLAM

Attorneys for Respondents.

Affidavit of Service by Mail attached.

[Title of Board and Cause.]

ORDER DENYING MOTION

On November 29, 1950, the Board issued its Decision and Order in the above-entitled proceeding,[1] finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and ordering the Respondents to cease and desist therefrom and to take certain affirmative action.

On June 6, 1951, the Respondents filed a Motion for Reconsideration of Decision and Order. No responses in favor of or in opposition to the motion were received from the Union or the General Counsel.[2]

The motion alleges, inter alia, that "the Board lacks jurisdiction to proceed with the case in contravention of Section 9 (h)" of the Act. We find no merit in this ground, nor in the other grounds stated in the motion which raise no new matter not previously considered by the Board in the Decision and Order.

The Union filed its charge herein on August 3, 1949, and the Board issued its complaint on March 28, 1950. We have administratively determined that

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[1] 92 NLRB No. 67.

[2] The Respondents' request for oral argument before the Board is denied as we believe the issues and the position of the Respondents are adequately presented.

the charging Union, as well as its parent federation the Congress of Industrial Organizations, were in full compliance with the filing requirements of Sections 9 (f), (g), and (h) of the Act substantially in advance of the issuance of the complaint in this proceeding.[3] Accordingly, we shall deny the motion.

It Is Hereby Ordered that the Respondents' motion for reconsideration be, and it hereby is, denied.

Signed at Washington, D. C., July 17, 1951.

PAUL M. HERZOG,
Chairman

JOHN M. HOUSTON,
Member

JAMES J. REYNOLDS, JR.,
Member

ABE MURDOCK,
Member

PAUL L. STYLES,
Member

[Seal] NATIONAL LABOR
RELATIONS BOARD

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[3] See Southern Fruit Distributors, 80 NLRB 1283, and H & H Manufacturing Company, Inc., 87 NLRB 1373, in which the Board held that the Act requires compliance at the time of the issuance of the complaint, rather than at the time of the filing of the charge. See also N.L.R.B. v. Highland Park Mfg. Company, decided by the United States Supreme Court on May 14, 1951.

In the United States Court of Appeals
for the Ninth Circuit

No. 12985

NATIONAL LABOR RELATIONS BOARD,
Petitioner

vs.

THOMAS W. DANT, ROBERT E. DANT (individually and as guardian for DIANA KERR AND DAPHNE KERR), JOHN R. DANT, ELEANOR C. DANT, MARY B. DANT, R. J. DARLING, E. S. GOODELL, MRS. MARY GOODELL, GLEN W. CHENEY, AND DOROTHY D. McNARY, co-partners dba DANT & RUSSELL, LTD.

Respondents

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board—Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, "In the Matter of Thomas W. Dant, Robert E. Dant (individually and as guardian for Diana Kerr and Daphne Kerr), John R. Dant, Eleanor C. Dant, Mary B. Dant, R. J. Darling, E. S. Goodell, Mrs. Mary Goodell, Glen W. Cheney, and Dorothy D. McNary, co-partners dba Dant & Russell, Ltd., and International Woodwork-

ers of America, Local 6-7, "the same being known as Case No. 36-CA-100 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Order designating Ralph Winkler, Trial Examiner, for the National Labor Relations Board, dated June 2, 1950.

2. Stenographic transcript of testimony taken before Trial Examiner Ralph Winkler, on June 2, 5, 6 and 7, 1950, together with all exhibits introduced in evidence.

3. Letter from Respondents dated June 19, 1950, requesting extension of time to file brief.

4. Copy of Chief Trial Examiner's telegram dated June 21, 1950, granting all parties extension of time to file briefs with the Trial Examiner.

5. Letter from Respondents dated July 3, 1950, requesting an additional extension of time for filing brief.

6. Copy of Chief Trial Examiner's telegram dated July 5, 1950, granting all parties further extension of time to file briefs.

7. Respondents' proposed findings and conclusions received July 24, 1950.

8. Copy of Trial Examiner's Intermediate Report, dated August 28, 1950 (annexed to item 12 hereof); order transferring case to the Board, dated August 28, 1950, together affidavit of service and United States Post Office return receipts thereof.

9. Letter from Respondents requesting an extension of time for filing exceptions to the Intermediate Report, dated September 15, 1951.

10. Copy of Board's telegram to Respondents, dated September 18, 1951, granting an extension of time for filing of exceptions.

11. Copy of Respondents' exceptions to the Intermediate Report received October 2, 1950.

12. Copy of Decision and Order issued by the National Labor Relations Board on November 29, 1950, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In testimony whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 15th day of June, 1951.

/s/ FRANK M. KLEILER,
Executive Secretary,

[Seal] NATIONAL LABOR
RELATIONS BOARD.

[Title of U. S. Court of Appeals and Cause.]

SUPPLEMENTAL CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board—Series 6, hereby certifies that the documents annexed hereto are a part of the record in the above-entitled matter filed with this court on June 21, 1951.

Fully enumerated, said documents attached hereto are as follows:

1. Respondent's motion for reconsideration of the Board's Decision and Order, received June 5, 1951, together with certificate of service.

2. Copy of Board's order denying Respondent's motion for reconsideration, dated July 17, 1951.

In testimony whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 26th day of July, 1951.

/s/ FRANK M. KLEILER,
Executive Secretary,

[Seal] NATIONAL LABOR
RELATIONS BOARD.

Before the National Labor Relations Board
Nineteenth Region

No. 36-CA-100

In the Matter of

THOMAS W. DANT, ROBERT E. DANT, et al.,

and

INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 6-7

Circuit Court House, Bend, Oregon
Friday, June 2, 1950 (DST)

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock a.m.

Before: Ralph Winkler, Trial Examiner.

Appearances:

William A. Babcock, 402 Public Service Building, Portland, Oregon, appearing as counsel for the International Woodworkers of America, Local 6-7.

J. P. Stirling and Roscoe Watts, 424 Failing Building, Portland, Oregon, appearing as counsel for respondent, Dant & Russell, Ltd.

Robert E. Tillman, 515 Smith Tower, Seattle, Washington, appearing for the General Counsel. [1*]

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* Page numbering appearing at top of page of original Reporter's Transcript of Record.

PROCEEDINGS

Trial Examiner Winkler: Back on the record.

Are you ready to proceed, Mr. Tillman?

Mr. Tillman: I am, sir.

At this time I will ask the reporter to mark for identification the original documents in the proceedings as General Counsel's Exhibit 1, giving the various and several documents the following alphabetical sub-designations: 1a, the original of the charge in the case; 1b, the affidavit of service of the charge upon the respondent; 1c, the original complaint; 1d, original notice of hearing setting the hearing at this location for May 31, 1950; 1e, the affidavit of service of the complaint and notice of hearing; 1f, the original answer filed by the respondent; 1g, the original of an order postponing hearing from the scheduled date of May 31, 1950, to the present date of June 2, 1950; and as 1h, the affidavit of service of the order postponing hearing.

Before offering these in evidence I might state I have not yet submitted them to the parties for their examination, but they may look at them if they wish, and then I do offer them in evidence.

(Whereupon, the documents referred to were marked General Counsel's Exhibit No. 1 for identification.)

Trial Examiner Winkler: Any objection, Mr. Stirling?

Mr. Stirling: No objection. [6]

Mr. Babcock: No objection.

Trial Examiner Winkler: There being no objec-

tion, General Counsel's Exhibit No. 1 will be received in evidence. Has the reporter marked them yet?

Mr. Tillman: I have marked them for him.

(Whereupon, the documents previously marked as General Counsel's Exhibit No. 1 for identification were received in evidence.)

* * * * *

Mr. Tillman: Proceeding to certain allegations in the complaint which were not denied by the respondent, I wish to call first to the attention of the Examiner that Paragraph III of the complaint alleges that the charging union is a labor organization. Respondents do not deny that paragraph in their answer, so I assume, therefore, that they admit it. As to the commerce fact alleged in Paragraphs I and II of the complaint, the same situation prevails; namely, that the respondents have [7] not denied either Paragraph I or II; therefore, I assume that they admit the facts set forth in those two paragraphs.

Trial Examiner Winkler: Mr. Stirling, do you admit the facts set forth in Paragraphs I, II, and III of the General Counsel's complaint.

Mr. Stirling: We do.

Mr. Tillman: At this time, Mr. Examiner, as my first witness I wish to call Floyd Parker. I might state for the record that I am calling him as an adverse or hostile witness.

Trial Examiner Winkler: Mr. Parker.

Mr. Stirling: Excuse me a minute. Before Mr. Tillman calls his witness I would like, if I may, to make two motions.

One is that because of the contract now in effect between Dant & Russell and Local 6-7 of the CIO, Article 7 of the contract which recites, "There shall be no discrimination against any of the employees because of any lawful activity on behalf of the union," and since the substance of the complaint is that there is an allegation that these men were discharged because of union activities the employees or dischargees have an adequate remedy at law under the Act to proceed in the District Court of the United States for any damages which they feel they may have incurred as a result of the alleged breach of the contract, and for that reason I move that the complaint be dismissed on the basis that they have an adequate remedy at law elsewhere. [8]

I would like to at the same time present this second motion which is this, that the complaint be dismissed for the reason that in the Article 7 of the same contract a grievance procedure in case of discharges is set out, and that grievance procedure was followed in this case. The outcome was that these men were not taken back. Since the grievance procedure has been followed, everything has been done under the contract that was possible to have been done in order to settle the alleged grievance or dispute, and for that reason I also move that the complaint be dismissed.

Trial Examiner Winkler: I presume the General Counsel will object to the motions. At the moment I suggest that the motions are premature. I don't have the contract before me, Mr. Stirling, and I don't have—well, I presume the contract is the basis for both motions. I will reserve ruling on the motions at

this time, and when I have a contract before me at that time I suggest you renew your motion, and then I will consider it.

Mr. Stirling: All right, thank you. Actually, I felt that my motion might be a little late instead of premature, but thank you.

Trial Examiner Winkler: I mean it's not alleged in your answer as an affirmative defense.

Mr. Stirling: No, it is not.

Trial Examiner Winkler: However, I will consider it. [9]

Mr. Stirling: If necessary, I will amend my answer to include that.

Trial Examiner Winkler: As an affirmative defense?

Mr. Stirling: Yes.

Trial Examiner Winkler: I will grant—Mr. Tillman?

Mr. Tillman: I have no objection to his amending his answer.

Trial Examiner Winkler: The answer will be amended accordingly.

Mr. Tillman, you had a witness?

Mr. Tillman: Yes, Floyd Parker.

FLOYD PARKER

a witness called on behalf of the General Counsel as an adverse witness, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Tillman): What is your name?

A. Floyd Parker.

(Testimony of Floyd Parker.)

Q. Where do you live?

A. Box 20, Redmond, Oregon.

Trial Examiner Winkler: May I ask all the witnesses to speak up because counsel table is a little distant away.

Q. (By Mr. Tillman): Mr. Parker, what is your occupation at the present time?

A. Yard foreman for Dant & Russell. [10]

Q. At their Redmond operations?

A. Yes.

Q. How long have you been yard foreman?

A. About a year or just a little over a year.

* * * * *

Q. To work with your hands. Who is your superior at the plant?

A. Mr. Clark.

Q. And has he been your superior ever since you were yard foreman? A. Yes.

Q. Do you take orders directly from him?

A. Yes.

Q. Did you give Mr. Clark's position? [11]

A. He is general manager.

Q. His title, he is general manager?

A. Yes. [12]

* * * * *

Q. Now you are aequainted with Max Gassner and Henry Christophersen? [13]

A. Yes.

Q. Did they ever work for the Company during the time you were employed there? A. Yes.

Q. Did they work under you?

(Testimony of Floyd Parker.)

A. After, yes, after——

Q. After you became foreman? A. Yes.

Q. When you became foreman then were they, did they instantly come under your supervision?

A. Yes, uh-huh, well, I wouldn't say instantly. It was kind of a transition period there. The man that had been in charge of them was transferred to different duties.

Q. Who was that man?

A. Pete Troutman.

Q. Pete Troutman, how long did they continue to work under you then?

A. Up until the time of their discharge.

Q. Now, Mr. Parker, it was you that recommended their discharge, wasn't it? A. Yes.

Q. And to whom did you make that recommendation? A. Mr. Clark.

Q. Do you remember how many days before they were actually discharged that you made the recommendation? [14]

A. It was Friday evening.

Q. Well, we may as well get it in the record now. I believe they were discharged on a Monday; were they not?

A. Yes, the reason for that was Mr. Clark was in Vancouver at that time, and I talked to him over the phone Friday evening after they had left, and he said if they were loafing that they be discharged, and he would sign the checks for them Monday, or he would have the checks ready for them Monday morning.

Q. Where are the checks usually made up?

(Testimony of Floyd Parker.)

A. At the office.

Q. In Redmond? A. Redmond office, yes.

Q. When you called up Clark what did you say to him about the men?

A. I said they had been loafing for three days.

Q. Anything else you told him?

A. I don't recall the exact conversation. I said—that was the gist of the conversation, that they had been loafing on the job.

Q. Loafing for the three days, you say?

A. Yes, for periods during the three days.

Q. Subsequently thereto who notified the men that they were discharged? A. I did.

Q. When did you receive your instructions to give them their [15] notification?

A. Sunday evening when Mr. Clark got back to Redmond. [16]

* * * * *

Q. Now, Mr. Parker, why was it that you recommended their discharge? A. Well——

Mr. Stirling: I believe he has already answered that question.

The Witness: Obviously for loafing on the job.

Mr. Stirling: If I might interpose an objection, I think that question has already been asked. Is that not a duplicate question?

Mr. Tillman: I think the question is somewhat different than the former question.

Trial Examiner Winkler: I will sustain the objection.

Mr. Stirling: It's looking for the same answer.

(Testimony of Floyd Parker.)

The [18] question was asked previously. The reporter has got it in there. That was the question directed to what he told Clark. We are now trying to find out exactly what the reason was.

Trial Examiner Winkler: Objection overruled, continue, Mr. Parker.

The Witness: As I said, for loafing on the job.

Q. (By Mr. Tillman): Did you have any other reason besides loafing on the job?

A. No, not other.

Q. Would you read the answer back?

(Last answer read by the reporter.)

Q. (By Mr. Tillman): Do you mean—would you care to finish your answer and say, "No, not at that time?"

A. I was going to say that their work had been unsatisfactory previous to that.

Q. But that did not lead up to your recommending that they be discharged?

A. Not on this particular instance.

Q. I wanted to be clear on that question. When you made up your mind to recommend their discharge you have already testified that it was because they were loafing on the job. Was there some other reason that entered into your mind?

A. Well, a man, if his work has been satisfactory right along, why, I don't suppose one, you might say, misstep would cause you to immediately decide that they ought to be discharged. Usually [19] if a man has performed satisfactorily before, why, you will allow him one mistake.

(Testimony of Floyd Parker.)

Q. You considered then that they had not performed satisfactorily before? A. No.

Q. Before the particular time they were loafing?

A. No, they had not.

Q. What other incidents did you have in mind at the time that you made your recommendation to discharge?

A. Well, their piling was unsatisfactory. I was continually every day in an argument with them about stickers being laid straight.

Q. Any other reason beside piling unsatisfactorily? A. No, not particularly.

Q. Over how long a period had their piling been unsatisfactory as far as you were concerned?

A. Well, ince I had taken over my job.

Q. And about how many months was that, if you remember?

A. Oh, four months, I guess it was, three months.

Q. Now when you talked to Clark on the phone did you say anything to Clark about the fact that they had been piling unsatisfactorily for four months.

A. No.

Q. Did he say anything about it?

A. Not in the telephone conversation. [20]

Q. On the telephone conversation, was it then that he agreed that they would be discharged?

A. Friday evening.

Q. He agreed then that they would be discharged?

A. He told me to tell the bookkeeper——

Q. To prepare the checks?

A. To prepare the checks, yes.

(Testimony of Floyd Parker.)

Q. Well now, to go into some more detail on this matter of loafing, do you remember or recall exactly what dates it was that they were loafing that you had objection to? A. Part of all three days.

Q. What days would they be, the month, if you can name the month?

A. It was the 13th, 14th and 15th of July, 1949.

Q. On those three days were they working as day labor?

A. Yes, part of the time they did a little piece work.

Q. During those three days part of the time they worked a little bit of piece work? A. Yes.

Q. Do you happen to know what the exact proportions were? In other words, how many hours they were on piece work and how many on day?

A. Well, I don't know. Mr. Stirling, I think, had the records on that. They worked twenty and a half hours I think at day labor, or twenty and a quarter, some such matter as that. [21]

Q. Well——

Trial Examiner Winkler: For what period is that?

The Witness: That's for the three days period.

Trial Examiner Winkler: Twenty and a half hours for the three days?

Mr. Stirling: He corrected that.

Trial Examiner Winkler: Twenty and a quarter or twenty and a half.

Q. (By Mr. Tillman): Then the difference that

(Testimony of Floyd Parker.)

they worked on piece rate would be the difference between that figure and 24 hours?

A. Yes, uh-huh.

Trial Examiner Winkler: What was that question?

(Last question read by the reporter.)

Mr. Tillman: I probably should not use the word "difference", the time that they worked piece rate would be the difference between twenty and a quarter and twenty-four hours?

The Witness: Yes.

Trial Examiner Winkler: In other words, their piece work was three and three-quarter hours. That would be the difference?

The Witness: Yes.

Trial Examiner Winkler: Between twenty and a quarter and twenty-four?

Mr. Tillman: Yes, that's right.

Q. (By Mr. Tillman): Were these two men, Gassner and Christophersen, regularly employed as day laborers? [22]

A. Well, I don't know just what you consider regularly. They had done day labor work before.

Q. What did you consider their regular job at the time? A. Piling lumber.

Q. Was that done on a day basis, I mean, on a day laborer's basis?

A. Done on piece work.

Q. On those three days that you have testified about, July 13, 14 and 15th, did you tell either or

(Testimony of Floyd Parker.)

both of the two men how much to load out per day?

A. No.

Q. How much do you think they should have loaded out per day per man?

A. Well, considerably more than they did.

Q. Well, could you approximate it in terms of board feet?

A. Well, I think they averaged just a little bit over 2,000 feet an hour for the hours of work that they did. That's for two men, and there is—that isn't very fast working.

Q. Now what I wanted is how much you think each man should have turned out in an eight-hour day.

Trial Examiner Winkler: May I interrupt? During these three days when they were working as day laborers and also working as piece work were they doing the same work, namely, piling lumber?

The Witness: No, dry loading on lumber but piling on piece work. [23]

Trial Examiner Winkler: Are we talking about dry loading?

Mr. Tillman: Yes, I will withdraw the question.

Q. (By Mr. Tillman): On the particular job or task that they were performing in the way of dry loading in those three days I would like to have your estimate of how much you expect a man should have turned out in an 8-hour day?

A. Well, we had crews down there that thought they had turned out two piles a day, which was in the neighborhood of 30,000 feet.

(Testimony of Floyd Parker.)

Q. Per team? A. Per team, yes.

Trial Examiner Winkler: Is that two in a team?

The Witness: Yes.

Q. (By Mr. Tillman): Then you think each man should turn out 15,000 board feet in a day?

A. That at least, yes.

Q. Aside from the fact that you have said you have had men down there who did do that, was there any other basis for your quoting that figure of 15,000?

A. I don't quite understand.

Q. I will withdraw the question. You have indicated, apparently, you have indicated that one of the reasons you think 15,000 is a figure is because you know of a couple men that did do that once. Now is there any other factor that makes you think 15,000 is a normal day's work in that sort of work? [24]

Mr. Stirling: I would interpose an objection to this line of questioning. The reason for my objection is this, that if we find that the men are loafing, that is the question, it seems to me. It isn't how much work they did in a day but whether or not they were loafing, and for that reason I don't see the reason for the line of questioning.

Trial Examiner Winkler: Well——

Mr. Tillman: If I might answer that, Mr. Examiner, I think in order for the Examiner and for the Board to determine whether there was just cause for the discharge here, one of the essential facts is to find out what normally would have been done during the same work, the work normal men would have

(Testimony of Floyd Parker.)

done, whether these fellows were held to a higher standard.

Trial Examiner Winkler: I am satisfied that the normal rate of piling is relative to the question of whether a man is considered to be loafing or not so I will overrule the objection.

Q. (By Mr. Tillman): There is a question pending then, what other factors led you to submit the figure 15,000 as a normal day's work?

A. Well, I don't set any standard set figure of 15,000. I say that has been done.

Q. Well then, there is no standard?

A. More than that had been done.

Q. And probably less than that had been done, had it not?

A. That is possible if you are in a particular type of lumber. [25]

Q. Does the Company have any figures that will, that they are able to look at and see how much they are entitled to expect to be piled or loaded out on a given day on a given type of lumber?

A. Well, I don't suppose there would be anything in black and white, only on the dry loading piece work basis, that had been done up until the time shortly before this.

Q. You mean on piece work you keep records in order to be able to pay the men?

A. That's right.

Q. Yes, but you don't keep records of the amount loaded out or piled on day labor?

A. No.

(Testimony of Floyd Parker.)

Q. In the twenty and a quarter hours to which you have testified that they worked loading out this dry lumber what was the total board feet that they loaded out in the——?

A. I would say that I didn't testify that they worked twenty and a quarter hours. They were paid for twenty and a quarter.

Q. Let's substitute that then. For the twenty and a quarter hours that they were paid on day labor how much did they load out?

A. They loaded out less than 50,000 feet.

Q. How much less?

A. Well, I couldn't, an approximation, in the neighborhood of forty-eight, forty-nine thousand.

Q. Had you ever estimated a higher figure before this hearing? [26]

A. Yes, I had, but I had looked it up, and I know exactly how many feet were in those piles when they started.

Q. What did you look up? I mean, where did you look up? A. On the inventory sheets.

Q. Where would the inventory sheets be, and what would it show?

A. It would show four piles of lumber at fifty-six thousand some odd feet, and they done approximately half or over one of the piles torn down already before these men started.

Q. Had you checked those figures before you made the recommendation for discharge?

A. No.

Q. You have checked them since?

(Testimony of Floyd Parker.)

A. I gave them credit for having loaded a little more lumber than they actually did at that time.

Q. How much did you credit them with?

A. Possibly five or six thousand feet more.

Q. Now, to your knowledge, were these men insubordinate in any manner toward you?

A. Well, in one instance they were.

Q. When was that?

A. There was an accumulation of four and six-inch loads and I had to——

Q. Can you give us the time first?

A. No, I couldn't the exact date. It was previous to this.

Q. How many days or weeks before their discharge? [27]

A. Well, possibly a month or, a little longer than that, probably a month and a half, two months. They kept going around this four and six-inch until I finally had to tell them to pile that first before they piled the rest of it.

Q. To whom did you tell that?

A. I addressed it to all the other pilers.

Q. How many other pilers were there beside Gassner and Christophersen? A. Two.

Q. All four of them were insubordinate at that time then?

A. That's right at that time. I wouldn't say they were all four either, but Mr. Gassner is the one that I particularly addressed my orders to that particular time.

Q. What did you say to him?

(Testimony of Floyd Parker.)

A. I told him that that lumber ought to be piled before the rest of it because it had been sitting there for several days.

Q. What did he say to you?

A. Well, I don't recall exactly, something about they would get to it later, and I said they had to get to it then because it was sitting there long enough where there was danger of it bluing.

Q. And then what did they do?

A. They finally piled it.

Q. What do you mean, finally?

A. Well, after being a little bit reluctant to do it.

Q. Well, was it a matter of minutes that you said, "You have to [28] pile these 4's and 6's first"?

A. Well, I don't know, it's—they didn't immediately go and pile the 4 and 6-inch that I had told them. They piled another load first, I think, more or less to assert their authority over me, and then went and did that.

Q. Were they in the middle of a load when you came along? A. Just got to work.

Q. You say they piled one load after you gave the orders before they went and obeyed your orders?

A. Yes.

Q. All four pilers did that? A. Yes.

Trial Examiner Winkler: Who were the other two pilers?

The Witness: Mike Gassner and Slim Erickson, E. R. Erickson.

Trial Examiner Winkler: Are they still employed by the Company?

(Testimony of Floyd Parker.)

The Witness: Yes.

Q. (By Mr. Tillman): Is that the only incident that you would characterize as insubordination?

A. Well, I don't know the exact definition of insubordination, as I said, there was a daily wrangle to keep the stickers straight and from being on edge.

Q. Well, was it a case of disobeying orders in the case of the stickers? [29]

A. Well, I would say if I said the stickers should be straight and they were not, that they must be.

Q. Because they deliberately piled them crooked?

A. It isn't a matter of deliberately piling them crooked, just a matter of not taking the time enough to pile them straight, just putting a sticker up and letting her go where she may. [30]

* * * * *

Q. (By Mr. Tillman): To answer that inquiry of the Trial Examiner on the matter of inserting the stickers—well, strike that. Which pilers did you observe who did not insert the stickers in the manner that you had suggested was the correct manner?

A. Well, Max Gassner and Erickson were the two.

Q. Two main offenders?

A. Two main offenders.

Q. At that time Max and Erickson were team mates; is that correct? A. Yes.

Trial Examiner Winkler: Erickson, is that one of the A-3's in this case?

Mr. Tillman: No.

Q. (By Mr. Tillman): What other offenders were there? A. Pardon?

(Testimony of Floyd Parker.)

Q. What other offenders were there?

A. Well, Mike Gassner——

Mr. Stirling: I object to that question.

The Witness: After my——

Trial Examiner Winkler: Just a second, please.

Mr. Stirling: I object to that question. I don't think it's involved here, the other men are involved here.

Trial Examiner Winkler: If one of the alleged reasons for a discharge is that they didn't do their work properly, I think it's relevant to show whether other men also did not do their [31] work properly. I don't know whether it is so or not, but it's relevant to the issue. I will overrule the objection. Continue, Mr. Tillman.

Mr. Stirling: I object further because it seems to me an old maxim two wrongs don't make a right. I mean, the fact that one man may do a job wrong and isn't a party involved here is not pertinent to this case that I can see.

Trial Examiner Winkler: Objection overruled, continue.

Mr. Tillman: All right, there is a question pending, I believe.

The Witness: What was the question?

Mr. Tillman: Mr. Reporter, will you read the question?

(Pending question read by the reporter.)

Trial Examiner Winkler: We are talking now about the piling of stickers; is that it?

Mr. Tillman: Well, the use of stickers in piling.

(Testimony of Floyd Parker.)

Trial Examiner Winkler: All right.

Mr. Stirling: Excuse me, may I get an automatic exception on my objection?

Trial Examiner Winkler: That's correct.

The Witness: Well, as I say, I think that Mike Gassner was the most careful piler of the bunch.

Q. (By Mr. Tillman): Well, Mike piled with Hank Christophersen?

A. Yes, that's right.

Q. If Mike was very careful, then the team must have been? [32]

A. No, not necessarily. If you had been there to see the loading, I could have shown you each end of these, of each one of those units, and I could have told you who piled each end, I think, I believe, without ever having seen them piled.

Q. Are we to take it from your answer then that you considered Christophersen was an offender on one team although Mike was not?

A. Not the—no, I wouldn't say that he was, well, he was considerably better than Gassner and Erickson but not as good as Mike Gassner.

Q. Did you ever have to call it to Hank's attention?

A. I called it to everybody's attention every morning.

Mr. Stirling: Excuse me, does the Trial Examiner understand there are two Gassners that we are talking about here?

Trial Examiner Winkler: That's what I am checking.

(Testimony of Floyd Parker.)

Mr. Stirling: Max Gassner is a dischargee involved, and Mike Gassner is an employee. The other Gassner who has been mentioned——

Trial Examiner Winkler: Mike Gassner is the careful piler?

Mr. Tillman: Yes.

Trial Examiner Winkler: Max Gassner and Christophersen are the ones who are not the careful pilers; is that correct; is that your testimony?

The Witness: I believe that's more or less the gist of it.

Q. (By Mr. Tillman): Are there any other incidents than besides the sticker incident and this one about the four and six-inch [33] pieces?

A. To my knowledge, that's the two big, two troubles that I had mostly.

Q. Those are the only incidents you would characterize as insubordination as far as you were involved? A. Yes.

Q. Now did those incidents influence you in making up your mind on recommending a discharge?

A. Well, like I say, you don't usually—a man that has performed satisfactorily for a period of years, and he makes one mistake, you usually don't just jump up and fire him.

Q. Would you answer the question though. Did that influence you in making up your mind?

Mr. Stirling: Excuse me.

The Witness: I don't think I thought of that at all.

Mr. Stirling: I didn't hear the question.

(Testimony of Floyd Parker.)

Trial Examiner Winkler: Did these incidents of insubordination to which the witness testified influence his decision to recommend discharge.

The Witness: I don't think I thought about that particular thing on the day of the loafing.

Trial Examiner Winkler: Well, let's talk about that Friday, the time you had the conversation with Mr. Clark. Had you thought about them at that time?

The Witness: Well, I don't recall exactly. [34]

Q. (By Mr. Tillman): Mr. Parker, have these men, Max Gassner and Henry Christophersen left their job without your permission or authority?

A. At what time?

Q. Any time.

A. No, I can't—they used to leave early all the time, come to work late, one or the other.

Q. Is that when they were on piece rate?

A. Yes, I know of no particular instance in mind that they left without, that is, when there was anything hanging fire.

Q. Was it customary for these contract pilers or piece rate pilers to come in late and leave early?

A. Well, it was for them. I know there had been quite a bit of discussion whether it should be or not be but——

Q. Wasn't it necessary that there be lumber on hand before they could start piling?

A. Yes, I would imagine so. If you are going to pile lumber there would have to be lumber there.

Q. Wasn't it often true that there was no lumber

(Testimony of Floyd Parker.)

on hand immediately when the operations began in the morning?

A. No, I would not say so.

Q. How many of the pilers were in the habit of coming in late and leaving early?

A. It was three from Bend.

Q. And that is who? [35]

A. Mike Gassner and Christophersen and Max Gassner.

Q. The other team mate, Erickson, did he get there early?

A. He was usually there a half hour before starting time.

Q. And when his partner left early in the evening, what did Erickson do?

A. He had to go home too.

Trial Examiner Winkler: Did Max Gassner leave early? A. Yes, they all.

Trial Examiner Winkler: Well, let me just go back a second. You testified that none of them left or none of them were away from the premises when there was work actually to be done; is that correct?

The Witness: In my——

Trial Examiner Winkler: I mean, speaking from your own observation.

The Witness: They didn't, no, not during the four months that——

Trial Examiner Winkler: All right, go ahead.

The Witness: They left early, but they never did when I had the job that I have, they never left with——

(Testimony of Floyd Parker.)

Trial Examiner Winkler: When there was work to be done, is that it?

The Witness: When there was work to be done, that is, there was nothing hanging fire.

Q. (By Mr. Tillman): Back on the question of loafing again, [36] what—I suppose loafing has a different meaning to different people. What did you mean by loafing, and what did these men do on these three days in here that you considered working?

A. Well, not work.

Q. Not work? A. That's right.

Q. There would be periods when they would not be doing any work? A. That's right.

Q. When they did work did they work at a good speed or how would you characterize that?

A. No, no, I didn't—there was obviously no exertion being put out.

Q. Not as much as you expected anyway?

A. Well, I would say no exertion.

Q. Do you know of any other manner in which they might have been regarded as inefficient besides the way they put stickers on?

A. You mean from my observation?

Q. Yes. A. As a boss or——

Q. As a foreman.

A. Well, no, not other than their sloppily piling lumber.

Q. It was sloppy aside from the stickers?

A. Yes.

Q. In what way?

A. Well, the ends were not kept particularly even.

(Testimony of Floyd Parker.)

You set one [37] load up with a lift truck, and the stickers would be, one end would be maybe eight inches from the end of the board, but at the other end they would be two feet or better. The next load they would be maybe a little evener, and the next would be just the reverse.

Q. How long had you observed them piling sloppily like that?

A. Ever since I went to work there.

Q. 1947?

A. To my knowledge. I don't qualify for an expert possibly, but that never satisfied me.

Q. Again, since Max was not working with Henry Christophersen, were you able to pin the blame on the sloppy piling on one member of the team and not the other?

A. Well, in——

Mr. Stirling: I object to that question for the same reason that I objected to the other one before.

Trial Examiner Winkler: Overruled.

The Witness: The question again?

Mr. Tillman: The reporter will read it.

(Last question read by the reporter.)

The Witness: Well, to a certain extent you can. Previous to the unit piling they were doing the machine piled. Christophersen was with a different partner at that time, and in my opinion there, why Christophersen and Erickson were the worst offenders. However, at that time I was under no—I was [38] an employee and working there myself.

(Testimony of Floyd Parker.)

Q. (By Mr. Tillman): In other words then was Erickson working with Max Gassner at that time?

A. Yes.

Q. Yes, and Max was better than Erickson?

A. No, I don't think you could have told much difference between the two of them.

Trial Examiner Winkler: Is that because, you say you were not able to tell because they worked as a team?

The Witness: I think you could have told, but I don't think there was much difference between the two of them. You can tell whether one man was a better piler than another man. [39]

* * * * *

Trial Examiner Winkler: Well, when you have a team of two working as pilers and the finished product wasn't an orderly job, now, how were you able to tell which of the two members of [40-41] the team was responsible for the sloppy piling, or perhaps both were responsible; how were you able to determine that?

The Witness: Well, on machine piling one man feeds the machine, and the other one is on top of the pile placing lumber, and they will alternate, and you can go out there and see about how high the load of lumber is after it's piled into a pile, and if the stickers are not placed properly, and the ends lap over or stick out from beyond the stickers. Then maybe the next load, why the other man piled, it was very orderly, and the ends are even.

(Testimony of Floyd Parker.)

Q. (By Mr. Tillman): How often do they alternate during the day?

A. Every truckload they put on the machine.

Q. How many truckloads does it take to make an individual pile or machine pile?

A. Well, on machine piling, on square piling it took three, sometimes four truckloads.

Q. How many piles can they pile in a day?

A. I don't, I am not familiar with how many they would at that time. When I was piling, I don't recall, I think it was around between, oh, forty to forty-five thousand.

Q. How many teams did you have working then?

A. There were three of them, I think.

Q. I think that question, that answer needs a little explanation. When you say three teams and at the same time speak of [42] forty-five thousand you are speaking of one team of two doing forty, forty-five thousand?

A. One team of two, ye.

Q. What I was getting at then, in order for you to observe the work of these men you had to come around rather frequently and watch six different men pile.

A. I didn't, I wasn't foreman at that time when they were machine piling, but I could see it because I was there all the time. I was lift truck operator.

Q. How about when you were foreman, did you go around and observe?

A. I was out there several different times during the day, yes.

(Testimony of Floyd Parker.)

Q. Did this sloppy piling enter into your recommendation to discharge?

A. No, there was no talk of sloppy piling at the time of the discussion of their discharge. The only thing that was mentioned was loafing.

Q. Can you think of any ways in which Max Gassner and Henry Christophersen might have impeded the production out there at the plant?

A. Over what period?

Q. Well, let's say during the period you were foreman.

Trial Examiner Winkler: Would you repeat the question, please?

(Pending question read by the reporter.) [43]

A. No, not from the time that I was foreman on.

Q. (By Mr. Tillman): During the time that you were foreman was it your conclusion that these men were grossly negligent in any manner?

A. Well, what do you mean by grossly negligent, what degree?

Q. Let's say very, very, extremely negligent.

A. Well, yes, they were in the instances that I have cited in the stickering on their units.

Q. Then the negligence as far as you refer, I mean as far as you think of it, refers only then to the fact that they piled sloppily and putting in stickers?

A. In their workmanship, yes.

Q. Any other respect in which you consider that they were grossly negligent?

A. No, offhand I can't think of anything. [44]

* * * * *

(Testimony of Floyd Parker.)

Q. (By Mr. Tillman): Mr. Parker, this question may sound like it has been asked before, but it's somewhat different. When did you yourself decide to make the recommendation to discharge Max Gassner and Henry Christophersen?

A. I don't recall. I think it was probably Thursday.

Q. What time of the day on Thursday?

A. I couldn't really say. I don't recall exactly. I think it was in the afternoon, possibly, I am not sure.

Q. How near lunch time?

A. I don't recall. I don't remember that exact. As I say, I think it was possibly after lunch, but I wouldn't swear to that. [45]

* * * * *

Q. (By Mr. Tillman): In an earlier question and an answer which was stricken you had indicated that you had spoken about your recommendation to certain employees before the actual discharge. Is that true?

A. I don't know whether I talked to them about recommendations. The question was put to me how they got by with the loafing that they were doing, and I said that as soon as I could see [46] Mr. Clark, why, that it was not going unnoticed, I don't believe. I don't recall the exact words.

* * * * *

Q. (By Mr. Tillman): Do you remember who it was that made the inquiry of you or the comment to you?

A. I recall one. There was several others, but I

(Testimony of Floyd Parker.)

can't recall exactly who they were, Red Conger.

Q. Would you give Red Conger's words as best you can recall them?

Mr. Stirling: I think he already—well, excuse me.

The Witness: Well, as I recall, he said if anybody else did that they would get canned and wondered how come they could get by with it.

Q. (By Mr. Tillman): Anybody else did what?

A. Loafed, doing what they were doing.

Q. What was Conger's job at that time?

A. He was driving the truck that day.

Q. When you drive the truck where do you work?

A. Well, ordinarily they move boxcars, push the charges into the kiln and drop loads to the green pilers when there are loads to be dropped. [47]

* * * * *

Q. On those same days, July 13, 14th and 15th, were there any pilers working at your operations besides Max and Henry?

A. What piling was done there was another crew operation then, I believe. I wouldn't swear to that though.

Q. What was the name of that crew?

A. Otto Bauer and Les Shelhorn. [49]

* * * * *

Q. Do you recall whether or not Bauer and Shelhorn worked on the piles that you eventually assigned to Henry Christopherson and Max Gassner?

A. They worked on one of them, yes.

Q. Do you remember what day they worked on it?

A. No, I don't.

(Testimony of Floyd Parker.)

Q. Was it that same week?

A. I don't believe it was. I think it was probably the week previous. [50]

* * * * *

Q. Now, do you know how long Bauer and Shelhorn worked on the piling which eventually was loaded out by Gassner and Christophersen? [52]

A. Why, it was in the neighborhood of an hour and a half.

Q. Do you know how much they loaded out in that time?

A. Well, they tore down a good half pile.

Q. How many board feet?

A. Between seven and eight thousand feet.

Q. Have you any figures to support that testimony, or did you look up any figures?

A. No. I believe they piled a little lumber the day that they started tearing that lumber down, and I took them off of there and sent them over to piling this jack pine, I think, is the reason—I wouldn't swear to the fact that what they did but they were not out there too long. I took them off the job some place or other and put them on another job for some reason or other. I don't recall.

Q. Well, your inventory figures which you spoke about earlier to-day would not show how much Bauer and Shelhorn unloaded? A. No, no.

Q. Did you observe the quantity that they had unloaded? In other words, were you out there before they started and after they finished, Bauer and Shelhorn?

(Testimony of Floyd Parker.)

A. They were full piles at that time.

Q. They were full piles?

A. Four of them altogether. They torn down, as I say, on the one pile.

Q. Mr. Parker, are you still a member of the Union? [53] A. No.

Q. Were you a member at one time?

A. Yes. [54]

* * * * *

Q. (By Mr. Tillman): Mr. Parker, would you identify Robert or Bob Dant for the record? Just state who he is.

A. Well, he is, I guess he is president of Dant & Russell, Limited. I am not sure of just what his official title is.

Q. Did Bob Dant pay you $25 for each one of these discharges?

A. I never received it.

Q. Well, was—— [55]

A. There was, the implication you are trying to make there I think is—I couldn't swear to it, but the statement that he was paying a bonus, I don't recall that I said he was paying a bonus, I think the conversation had to be with——

Trial Examiner Winkler: What conversation are you talking about?

The Witness: Well, I know where he is getting his question from because that was supposed to be one of the strong points, that Bob Dant had offered a bonus on these two fellows, and I was supposed to have said that. I don't recall the exact conversation on it, and

(Testimony of Floyd Parker.)

as I say, I think the remark I said at one time was that it would be worth a case of Scotch whiskey probably to Bob if he were rid of them. What brought the conversation on was, there was quite an accumulation of stained lumber. There was no union activity or anything else involved in the conversation, as I recall it.

Q. (By Mr. Tillman): Do you remember when you made that statement, about?

A. No, I don't. As I say, I am not too sure that I had the foreman job at that time. That was, I couldn't——

Q. Do you know where you made the statement?

A. Oh, I think possibly in the garage one day during lunch hour. I don't recall exactly.

Q. Were there several employees around?

A. I suppose, there usually is. [56]

Q. Well now, about the statement of the $25 which you have evidently referred to as a bonus statement, is it your testimony that you ever made that statement that Bob Dant offered——?

A. I don't recall that I—the exact words I said, I said that Mr. Dant never offered a bonus of $25, never offered me anything for discharging. In fact, he has never talked to me about it.

Q. I don't understand your answer. Are you testifying now that Dant at no time made such an offer to you or that you said that to somebody?

Mr. Stirling: I think he gave a full explanation of what took place.

Mr. Tillman: I want to know.

(Testimony of Floyd Parker.)

A. I said Mr. Dant never made an offer of a bonus for the discharging of anybody to me or anybody else that I can remember, and I couldn't swear that I maybe didn't say that. As I say, as I recall the conversation, it was to do with stained lumber, and I said it would be probably worth, as I thought, it would be probably worth a case of Scotch whiskey to Mr. Dant to be rid of them or the stained lumber.

Q. (By Mr. Tillman): Regardless of the fact as to whether Mr. Dant ever made such an offer to you, did you state out at the plant that Mr. Dant had offered $25 to you or Mr. Clark——

A. As I say——

Q. Wait until I finish the question, please,—offered $25 [57] to you or to Mr. Clark for getting rid of Max Gassner and also the same amount for getting rid of Henry Christophersen?

A. I didn't make any such statement.

Q. You never made any such statement?

A. In those words.

Q. Did you make such a statement to or in the presence of Elbert Conger?

A. I don't recall.

Q. In the presence or to George Brown?

A. I think I have explained what; that it was conversation as I recall it.

Q. George Brown was there when you made the "case of Scotch" statement?

A. I don't know who was there. I don't recall who was there even.

Trial Examiner Winkler: Was that case of Scotch statement made before you became foreman?

(Testimony of Floyd Parker.)

The Witness: I don't know either.

Trial Examiner Winkler: I think that you testified——

The Witness: If they can remember what I said word for word, they will probably remember the date.

Trial Examiner Winkler: There is quite a difference between a case of Scotch and $25.

The Witness: That's quite a bit, too.

Q. (By Mr. Tillman): Do you recall making the statement to or [58] in the presence of Otto Bauer?

A. I don't recall. As I say, I do recall a conversation probably along those lines, but I don't recall who was there.

Q. You have recalled a single conversation along those lines, as you put it. Now, did you make, did you have a similar conversation on more than one occasion? A. I don't recall that.

Q. I think that——

Mr. Stirling: I think that an issue is being made or attempted to be made here of a remark made in a joking way. That was understood as such at the time, I am sure.

Trial Examiner Winkler: Well, isn't that a matter of examination or your own direct examination?

Mr. Babcock: It's a speech.

Mr. Stirling: Well, we are making the——

Trial Examiner Winkler: Well, continue, Mr. Tillman.

Mr. Tillman: I have just one or two other questions on something else.

Trial Examiner Winkler: Now before you con-

(Testimony of Floyd Parker.)

tinue, since we have touched on this case of Scotch statement, at one point the witness testified that this statement was made before he became the foreman. Later he testified he didn't know.

The Witness: No, I didn't testify it had been for certain. As I say, I don't recall, but it may have been I made that statement before I was foreman. I am not sure. [59]

* * * * *

Trial Examiner Winkler: I would like to ask one question. During this period, Mr. Parker, this three-day period when these two employees were allegedly loafing, did you caution them about their loafing during this three-day period?

A. I didn't caution them.

Trial Examiner Winkler: I mean, did you have any conversation with them about it?

A. I went out and asked them why they were not working and if [60] there was any material they needed, carrier banks or anything like that for the job.

Trial Examiner Winkler: But you never, you never told them in so many words, "Now, men, you better get to work or if you don't get to work it means your job?"

The Witness: No, I never.

* * * * *

Examination by Mr. Babcock

Q. Mr. Parker, just to get a little explanation in the record, this plant of Dant & Russell at Redmond is what is known as a remanufacturing plant; is that

(Testimony of Floyd Parker.)

correct? A. Yes. [61]

Q. It receives rough green lumber from other mills and reprocesses that lumber? A. Yes.

Q. In general, what is the processing done? Does it consist of planing and molding, making moldings and finished lumber? A. Yes.

Q. Is that correct? A. Yes.

Q. It is not a sawmill? A. No.

Q. And how is that lumber received from the other mills, that is, the raw material that you use, how is it received? A. In truckloads.

Q. How is it deposited at the plant?

A. You mean from the mills?

Q. When the trucks bring it in is it dumped there over in the same spot?

A. There is a truck jack that they leave the loads at.

Q. Now, these lumber pilers we are talking about, does part of their job include the piling of that lumber which is received from the trucks?

A. The green pine, yes.

Q. That's the green piling? A. Green pine.

Q. Well, it's also a green piling, a green lumber, isn't it? [62] A. Yes.

Q. The work, that is done right there at the place where the lumber is received?

A. Well, not exactly at the place, no. Our truck takes it from the jack and drops it.

Q. Your truck moves it to some other space and there it is piled? A. Yes.

Q. And is that piled into units for a lift truck to

(Testimony of Floyd Parker.)

handle? A. Yes.

Q. In other words, the lumber is taken from a big pile and put on blocks, is it, into units that a lift truck can handle? A. Yes. [63]

* * * * *

Q. What had your previous experience been, Mr. Parker? Had you worked as a lumber piler before that time, or had you done other work?

A. No.

Q. You had done some other kind of work; is that it? A. Yes.

Q. How much time did you work altogether at Dant & Russell as a piler?

A. Oh, not, about three months altogether, I guess.

Q. Three months altogether?

A. Something like that, I don't know exactly.

Q. Can you tell me about when that was, the year?

A. I had started in 1948 up until about, I think sometime in [64] August possibly, August or September of 1948.

* * * * *

Q. Well now, after you started did Max Gassner and Henry Christophersen both work continuously as lumber pilers up until the time they were fired?

A. What was the question again?

Q. Did they both work continuously as lumber pilers from the time that you started out until they were discharged? Was that their regular work?

A. That was their regular work. They did other work from time to time.

(Testimony of Floyd Parker.)

Q. Part of that work was on contract, a piece basis, and part of it on day work or hourly work basis; is that correct? A. That's right.

Q. And the work of piling green pine was largely contract, I take it? A. Yes.

Q. And the work that they were doing on these three days in [65]question was tearing down a pile; is that correct? A. Yes.

Q. That was in the yard? A. Uh-huh.

Q. Is that one of the large square piles that had been piled previously by machinery? A. Yes.

Mr. Stirling: Excuse me, wasn't it tearing down piles; it's plural, is it not?

The Witness: Well, there was more piles. There was three and a half piles of lumber when they started, yes.

Q. (By Mr. Babcock): Were those last three and a half piles or the last four piles of big square piles that had been started there in the yard?

A. Yes.

Q. The others had been removed previously?

A. Yes.

Q. Now these piles consisted of what was called misfits, did they not? They were referred to as piles of misfit lumber?

A. Well, we classified it as rip stock.

Q. They were random widths and lengths and thicknesses, weren't they? A. Well——

Q. Odd thicknesses?

A. Well, they were classified, they were scaled at seven-quarter [66] pieces.

(Testimony of Floyd Parker.)

Q. Seven-quarters?

A. Inch and three-quarters thick.

Q. Which is odd size, is it not?

A. Well, it isn't a common size.

Q. Then you had been there for some time and no use had ever been made of it; is that correct?

A. It had been piled, I think, in the spring of 1948.

Q. Was it made up of random widths and lengths? A. Yes.

Q. Now the speed at which you can tear down and repile lumber depends in part, does it not, on the type of lumber that is being handled?

A. That's right.

Q. And there are certain sizes which can be handled more easily or with greater speed than other sizes; is that correct? A. Yes.

Q. That is, the wider the boards, you can handle a larger quantity, can't you, than the 4's or 6's?

A. Yes.

Q. It is also true, isn't it, that it is easier and faster work to handle boards of a single dimension of a single length than to handle random stuff?

A. Yes.

Q. Had you handled any of this breaking down of these piles [67] on a piece work basis, or had that all been done on the day basis?

A. They had all been done on day work at the time, but they changed over to unit piling.

Q. When was that that they changed over to unit piling, approximately?

(Testimony of Floyd Parker.)

A. Oh, that was along in July or August or—August, I think, of 1948.

Q. 1948? A. Yes.

Q. Was that before you were made a foreman?

A. Yes.

Q. Do you remember the approximate date when you became foreman?

A. It was either the first of February of 1949 or the first of March. I have forgotten right offhand now.

Q. There was a strike in the winter of 1948, was there not? A. Yes.

Q. At the plant, and that ended in about the month of December, 1948?

A. It was the first, I think it was the 7th or 8th, some place along there, of December.

Q. At that time you were still a member of the Union? A. Yes.

Q. So that it was after that that you became foreman, sometime early in 1949? [68]

Q. After the unit piling system was started then was the, were the rest of the square piles there in the yard broken down by day work or piece work?

A. No, they did, they did the majority of that by piece work until, oh, I don't know, there wasn't very many piles left when they finally, when the rest I think tore down by day work.

Q. The amount that those piles, that is the quantity that can be broken down in any given period of time would, of course, depend on the particular pile, what kind of lumber it was, how the pile was made

(Testimony of Floyd Parker.)

up; isn't that true? A. Well, yes. [69]

* * * * *

Q. Let me ask you this. I think this will clarify it. What type of work did you use piece work, and what type of work did you use day rate? How was that decided or determined?

A. Oh well, the only piece work is car loading and piling.

Q. I am talking about piling though. On what occasions did pilers work piece rate and on what occasion did they work day rate?

A. Well, they worked on piece rate on both occasions previous to this time. They worked on piece rate tearing down several times, and then they worked on piece rate on piling.

Q. Day rate on tearing down?

A. They had done piece work on tearing down also and day work both, day labor both.

Q. Was the piling at day rates?

A. No, they piled piece work, and they did both piece work and day labor or tearing down.

Q. I see, and had you observed the work that was done by other men in tearing down on a day work basis? A. Yes.

Q. Had you observed work that was done on a piece rate basis at both tearing down and piling?

A. Yes.

Q. Now, as a matter of practice in the plant generally in the [71] industry, it is true, is it not, that when the men are working at piece rate basis they

(Testimony of Floyd Parker.)

generally work somewhat harder and faster than when they work on a day work basis?

A. That's right.

Q. That's right, and that's a general truth. The amount they earn in that case depends upon how much they work, and the more they work, the harder they work the more they can earn, and that had been true there at the Dant & Russell plant, hadn't it, that the men were not expected to work just as dead hard as they could when they were working on a day rate? A. No, that's right.

Q. It was expected that they would take it somewhat easy?

A. Well, I don't know whether you would say take it easy or not. It all depends on what you define easy is.

Q. Well, the practice was that they took it easier than on contract work?

A. Yes, they wouldn't work as hard as on contract.

Q. Had any standard been established, to your knowledge, by the management on how much work had to be done or how hard a man had to work when working on day rate basis?

A. There had been no set figure established, no.

* * * * *

Q. Now was there quite a bit of bickering among, that is, between [74] the crew and the Company on this piling work during the time that you were there, back and forth?

A. Well, you mean during the time I was piling?

(Testimony of Floyd Parker.)

Q. During all of the time that you worked for the Company.

A. Well, there had been——

Q. About rates and about condition and facilities and so-forth.

A. Oh, there was always something going on there. The pilers were into the office every morning about something, as a rule.

Q. I may be incorrect, but I have the impression that there was apparently an unusual number of complaints or beefs or grievances from the piling crew with respect to rates and conditions; is that correct?

A. Well, how do you mean?

Q. Over the period——

A. Do you mean through committee negotiation?

Q. Yes, yes.

A. Or just through individual bargaining?

Q. Yes, through the committees and the individuals both.

A. Well, there was quite a bit, yes.

Q. Now Max Gassner and Christophersen——

Trial Examiner Winkler: By committee you mean union committee?

The Witness: Union committee.

Q. (By Mr. Babcock): You had a complaint, grievance, or standing committee, did you not? [75]

A. That is correct.

Q. Were Max Gassner and Christophersen members of that committee part of the time?

A. Well, yes, they were from time to time.

Q. And did they ordinarily act as spokesmen for

(Testimony of Floyd Parker.)

the pilers in connection with these various beefs that arose?

A. Yes, I don't know whether they were spokesmen for the pilers or not, but they did the talking.

Q. Yes, they did most of the talking about these various complaints and beefs both as individuals and as members of the Union committee?

A. Well, they took up most of their beefs right directly into the office all the time.

Q. Well, they were both members of the committee, were they not, maybe not all the time, but during most of the time?

A. Up until—they both were on, I think, until the spring of 1948 and after that I think—no, I don't know whether either one of them was on in 1948 or not. [76]

* * * * *

Q. (By Mr. Babcock): As an employee and later as a foreman there you were aware of the fact that Max Gassner and Hank Christophersen were outspoken representatives of the crew and with respect to working conditions; isn't that correct?

A. Well, I would say they were outspoken and they were strong union men.

Q. Yes.

A. However, as far as them being outspoken for the crew as a whole on union activities, I would not say they were probably any more so than anyone else around there.

Q. But they were known as outspoken men; isn't that true, about conditions? A. Yes.

(Testimony of Floyd Parker.)

Q. On the pile crew? A. Yes.

Q. And they were also known as men who ——

Trial Examiner Winkler: May I interrupt one second?

Mr. Babcock: Yes.

Trial Examiner Winkler: They were known to whom, I mean, first of all?

Mr. Babcock: To the crew as a whole; is that correct?

The Witness: Pardon?

Q. (By Mr. Babcock): To the crew as a whole?

A. Well, isn't that about the same question? [78]

Trial Examiner Winkler: Well, I mean there is a question of imputing knowledge, for example, to the Company.

Q. (By Mr. Babcock): Yes, I asked you whether they were known as outspoken, and he wants to know whether, known to whom they were outspoken.

Trial Examiner Winkler: Yes.

The Witness: They were outspoken among the crew members.

Mr. Stirling: All he can give is his own——

Trial Examiner Winkler: Yes, I don't want the witness to answer the question and give knowledge to the respondent that the respondent did not actually have. I mean, if the information was known to the Union it was not necessarily made known to the Company. In other words, I am taking the position Mr. Stirling does.

Q. (By Mr. Babcock): They were also known as

(Testimony of Floyd Parker.)

outspoken men to the management as committeemen and in their private discussions?

Mr. Stirling: Well now, I object to that. He said he does not know for sure whether they were members of the committee during this particular time from the spring of 1948 on. Now that question ties them in as members of the committee.

Mr. Babcock: It's a proper question that he might answer.

Mr. Stirling: It's up to the Examiner to determine whether it's proper, a proper question or not.

Trial Examiner Winkler: May I put a question to the witness? [79]

Mr. Babcock: Yes.

Q. (By Trial Examiner Winkler): Mr. Parker, during the period that you were a member of the Union did you know Mr. Christophersen and Mr. Gassner, that is, Max Gassner, to be active union members?

A. Yes, they were active union members.

Q. Now did you know them to be active in presenting the position of the Union to the Company as committeemen during the period that you testified that they were members of the committee?

A. Well——

Mr. Stirling: I can object to the question now, can I not?

Trial Examiner Winkler: Yes.

Mr. Stirling: And I do object to it because he has not said specifically when they were members of the committee.

(Testimony of Floyd Parker.)

Trial Examiner Winkler: I am talking about the period he knows they were members. In other words, I am not including 1948.

Mr. Stirling: He does not know.

The Witness: I have been in meetings when they were both there.

Trial Examiner Winkler: At meetings with the Company; is that correct?

The Witness: Yes, I was.

Trial Examiner Winkler: When were these meetings, can you [80] tell us that?

The Witness: No, I couldn't say.

Trial Examiner Winkler: Were they in 1947?

The Witness: I was just trying to think. I don't recall whether I was on the committee previous to the time that I was chairman or what the deal was, but I was in meetings with them; however, as I say, I think it was negotiation of the contract was when they were both on it.

Trial Examiner Winkler: When was this contract?

The Witness: In 1948 when they signed.

Trial Examiner Winkler: Was that at the end of the strike?

The Witness: No, this was the spring of 1948, previous. [81]

* * * * *

Q. Now before Clark was foreman—I mean was manager, or superintendent, whatever you call him, who had been the previous superintendent during your period of work there?

(Testimony of Floyd Parker.)

A. We had Vic. Anderson who was the first one, and then V. V. Redman and Percy Cook. [84]

Trial Examiner Winkler: Are these men who occupied the same job Mr. Clark has now?

The Witness: Mr. Clark?

Q. (By Mr. Babcock): Who occupied the job that you have now, before?

A. Pete Troutman.

Q. All the time?

A. Well, up to, he was a——

Q. Was he a yard foreman when you came?

A. I don't think they had had, he was the first one they had classified as a yard foreman or yard boss.

Q. While you worked there? A. Yes.

Q. Had there been certain disputes arose about the piling work and the rates for it with Cook and Redman? A. I think so.

Q. And had Max and Hank been active in speaking on behalf of the crew in those disputes?

A. Well, I and Christophersen went in on one dispute that we had on it, and I don't recall, I suppose Max was on some of them.

Trial Examiner Winkler: Can we fix the date of this, please?

Mr. Babcock: Fix the times of those, too.

A. Well, one——[85]

Q. (By Mr. Babcock): Or whatever number there were.

A. One time with Hank I went in I think was in possibly July or August, 1948.

(Testimony of Floyd Parker.)

Q. Were there others?

A. Well, I don't, I am not too familiar with—I don't recall just exactly when the previous, previous discussion on rates was now. I don't recall just when that was.

Q. Well, who was the, who was the manager or superintendent at the time that you and Hank went in? A. Cook.

* * * * *

Q. And did you hear statements made by either Redman or Cook that if they could get rid of Max and Hank there wouldn't be so much trouble around there?

A. Not to such an extent I didn't, no.

Q. You heard about those statements?

A. Hearsay, yes, I heard hearsay.

Q. Did Clark tell you something to the same effect? A. No. [86]

Q. Did you discuss with him their activities as so-called trouble makers?

A. No, he said that if they didn't pile lumber the way it should be piled they would be canned. He was not talking about—he was talking about all pilers in particular.

Trial Examiner Winkler: When did he say that?

The Witness: Well, I think he said that in one meeting they were having there. I wasn't present at that meeting but he, they were discussing the stickers, I think it was, one day when he told me it would either have to be, the lumber would have to be piled right or changes would be made.

(Testimony of Floyd Parker.)

Trial Examiner Winkler: This was during the time you were foreman?

The Witness: That was shortly after I was made foreman.

Trial Examiner Winkler: Was Clark referring specifically to the men involved in this case?

The Witness: No, that was the piling as a whole.

Trial Examiner Winkler: He was referring generally to the piling, generally?

The Witness: As a whole.

Q. (By Mr. Babcock): What do you mean by a meeting? You said it was a meeting. What kind of a meeting?

A. Well, they made a wage adjustment on the piling rates was all.

Q. Were you at the meeting? [87]

A. No, I wasn't at the meeting that day.

Q. That was a meeting between the committee and the Company?

A. And the Conciliation Service. Well, I wouldn't say that I was—I wouldn't say that either because I don't know.

Q. When was that meeting?

A. I don't know, it was early spring of 1949, some place along there. I don't recall exactly when it was, January, February, some time or other in there.

Q. Was it before the strike, after the strike, or——?

A. It was after the strike.

Q. You were not at the meeting with the conciliation in which this matter was taken up?

(Testimony of Floyd Parker.)

A. I know the conciliation was there. They had a meeting when the rates were finally set at what they are now.

Q. Were you told at that meeting reference had been made to the Company not wanting to take back four pilers after the strike?

A. No, I never did hear that.

Q. Did you know or were you told that Clark had made the statement that he didn't want Max and Hank back there?

A. No, I had never heard.

Q. Do you recall who it was, who made the motion to call that strike?

A. No, I don't right now.

Q. Do you recall whether it was Max that made that motion? [88]

A. He made the motion to strike, but I don't know whether that was it. He usually had a motion to strike at every meeting. [89]

* * * * *

Q. But you never discussed union activities of these two men with him?

A. During the time I worked for Mr. Dant, why, I don't suppose I discussed anything with him pertaining to lumber other than through the meetings.

Q. Now isn't it a fact that after you became foreman that Mr. Clark suggested to you that you try and find an excuse to get rid of Max and Hank?

A. No, sir, he never said anything like that.

Q. And that when you called him on Friday of

(Testimony of Floyd Parker.)

this week that you told him in effect that you thought you had a way to fire them?

A. No, I don't recall any remark like that, no.

Q. On Thursday in which you said you decided that you were going to recommend that they were going to be fired how much of the piles had they torn down at that time? A. Oh, about half.

Q. About half of the—— [90]

A. Three and a half.

Q. Three and a half piles, in other words, about 25,000 feet?

A. Somewhere in that neighborhood.

Q. That would require a production of in excess of 10,000 feet per man per day then, would it not?

A. No, I don't think so. It would be—the actual hours that they were on day labor amounted to well over 14 hours or 13 hours, right around 14 hours.

Q. In which days?

A. In the first two days.

Q. In the first two days. When did they do this contract work, what day?

A. They did a little each day, I believe.

Q. Monday, Tuesday?

A. Wednesday and Thursday.

Q. I mean Wednesday and Thursday and Friday? A. Yes.

Q. Then, according to your figures, they worked on Wednesday and Thursday a total of about 14 hours at day work; is that right?

A. Somewhere in that neighborhood, yes.

Q. During the course of the day some time you

(Testimony of Floyd Parker.)

decided you were going to recommend they were to be fired at some time when they worked less than 14 hours; is that correct?

A. Some place along there, yes. [91]

Q. Now isn't it a fact that on day work, this sort of, this type of work, that 10,000 square feet is a good average day's work?

A. I don't, I wouldn't——

Q. Or eight or ten thousand?

A. I wouldn't say that it was.

Q. Well, you had had men that had worked and turned out less, a lot less work than they on the day work, didn't you, less than 10,000, less than 8,000?

A. Well, not to my knowledge, not since I have been foreman. Before that I couldn't say.

Trial Examiner Winkler: May we know at this time whether the witness would know whether or not they had?

The Witness: Well, I wouldn't——

Trial Examiner Winkler: I mean, for example, suppose someone else had torn down only say 5,000 board feet. Would you know about it necessarily?

The Witness: No.

Q. (By Mr. Babcock): From your experience in piling work, and as a foreman, you did know that they wouldn't, that the men working on day work would produce maybe a third or even less than a third that they would on contract work?

A. I didn't expect them to do that, no. I didn't figure them to do near what they would do on con-

(Testimony of Floyd Parker.)

tract work, but I expected more than a third. [92]

* * * * *.

Q. Now was your objection to the work that Hank and Max did on these three days due to the fact that they didn't produce anything or that they stood around and didn't work?

A. Well, a little of both.

Q. A little of both. It is a fact, isn't it, that experienced [96] men can be working a good clip and then resting awhile can turn out more work than some inexperienced team that works steadly throughout the day; isn't that a fact?

A. That's possible, but they haven't ever shown it.

Mr. Babcock: That's all.

Examination by Mr. Stirling:

Mr. Stirling: I would like to ask a few questions of Mr. Parker now just in connection with the questions that he has been asked.

Q. (By Mr. Stirling): Would you explain this piece rate and day rate or day labor rate as it was in effect at that particular time? We have been talking here about those two rates and my question is this. At that time what did the day labor rate apply to?

Mr. Tillman: May I inquire if counsel is referring to July 13, 14th, and 15th?

Mr. Stirling: Yes.

The Witness: You mean what rate of pay were they getting?

Q. (By Mr. Stirling): Well, what work was

(Testimony of Floyd Parker.)

covered by a day labor rate?

A. Everything except green piling and car loading.

Q. Now then, what were they doing during these twenty and a quarter hours that they worked during the 13th, 14th and 15th?

A. They were tearing down dry lumber, dry loading.

Q. And that is not green piling? [97]

A. No.

Q. What is the difference between tearing down or dry loading and green piling?

A. Well, your green lumber is heavier, green off the logs, sawed and piled on stickers to dry, and dry loading is tearing down the lumber after it has been dried.

Q. And at that time the day labor rate was paid for, of so much per hour was paid for dry loading or tearing down lumber that was already dry?

A. Yes.

Q. And the piece work rate was paid for green piling or piling lumber in piles shortly after that came in from the mill? A. Yes.

Q. Or shortly after they were shipped into the plant here; is that right? A. Yes.

Q. Now is there a difference in the work involved in doing green piling or in doing—and in doing dry loading or tearing down of dry lumber?

A. You can tear down more dry lumber than you can pile green.

Q. What is that?

(Testimony of Floyd Parker.)

A. It's easier down hill. Piling is uphill; tearing down is downhill.

Q. Is there any difference in the weight between the dry and the green? [98] A. Yes.

Q. Is it a material difference?

A. Yes, uh-huh.

Q. In other words, the dry lumber is lighter than the green lumber; is that right? A. Yes.

Q. In other words, then, dry lumber can be handled faster than green lumber; is that right?

A. Yes.

Q. Now when you speak of the staining of the lumber, in your testimony you mentioned lumber being stained. Just what did you mean by that?

A. Well, that's a fungus, mould growth on green lumber that starts when green lumber is not piled, does not have air around it, causes the board to be blue.

Q. Does that have any effect on the value of the lumber?

A. That depreciates the value, yes.

Q. Then it is important that the green lumber be piled fairly soon after it comes into the yard; is that right, in order to avoid that staining?

A. Yes.

Q. And that is what you were referring to earlier in your testimony when you mentioned that there had been some left unpiled which had stained?

A. Yes, uh-huh. [99]

* * * * *

Trial Examiner Winkler: Yes, may I ask this. On these three days in question were these men, they

(Testimony of Floyd Parker.)

were both engaged in, they were engaged both in piece work and in day work? In other words, they were engaged in tearing down and piling; is that correct?

The Witness: Yes, uh-huh.

Q. (By Mr. Stirling): And the 20¼ hours that he refers to is the time devoted to tearing down dry lumber or the day labor rate work?

A. Yes.

* * * * *

Examination by Mr. Tillman:

Q. Has it been established in the lumber industry how long it takes for lumber to stain?

A. Well, during the heat of the summer, why, it doesn't take over a day or two a lot of times when the sap is up in the log and she sits there.

Q. In the log, you say?

A. Well, I say when the sap is up in the log and the log is cut [101] into parts, and then it lies in a load of lumber, why, it will stain very fast.

Q. And what if weather conditions are cooler?

A. It doesn't stain as fast then.

Q. How long would it take?

A. Oh, probably six weeks, a month or six weeks.

Q. When you find instances of staining, where physically in the plant do you run across the effects of staining? A. You mean——

Q. Where do you discover it?

A. Are you speaking botanically now or——?

(Testimony of Floyd Parker.)

Q. No, I mean where will the lumber be situated when you discover that it has been stained? Is it piled out in the yard somewhere?

A. No, it is as it is being piled.

Q. You notice it as it is being piled?

A. Or it is already stained in the load before it is piled.

Q. That's what I am trying to find out. In point of time will staining occur after piling?

A. It's possible, but it has not occurred there in the last year.

Q. Well, you say in the last year. Had it occurred at least when Max Gassner and Hank were working there?

A. I couldn't say as to that. I don't know. There was stained lumber in there. I know it was stained when it was piled because I piled some of it. [102]

Q. (By Mr. Babcock): You say it was stained when it was piled? A. That's right.

Q. (By Mr. Babcock): That was before it was piled? A. Yes, yes, sir.

Q. (By Mr. Tillman): Is it possible that anyone else besides the pilers could be at fault for not piling the loads rapidly enough?

A. In some instances, yes.

Q. Who else might be at fault?

A. Probably the mill, the management or the pilers.

Q. How could the sawmill be responsible?

A. If they didn't get it in from the mill fast enough or if they left logs down in the woods.

(Testimony of Floyd Parker.)

Q. The logs themselves would stain?

A. It would be what would be called log stain; however, you can tell the difference between log stain and load stain.

Q. But a slow delivery from the sawmill, the planing mill, and the molding plant might result in staining? A. Yes.

Q. And then you mentioned management might be at fault. Did you mean in some circumstances management of Dant & Russell might be at fault?

A. Well, I recall one instance where there was a lot of lumber came in; however, I would like to qualify my statement to this extent, that there was a combination. There was more lumber [103] coming in than the crews could handle it, and it was getting piled—it was not getting piled as fast as it should be.

Q. Was that the situation when no one in management seemed to know where to pile it or what to pile?

A. No, I recall, the instance I am thinking about was before I had started doing any piling at all to speak of, and I had piled in the evenings after getting through dry loading to catch up.

Q. What sort of procedure would you go through to fix the blame for stains?

A. Well, the last lumber that I was piling with Mike Gassner on the machine, there was some of those loads had been there for better than two weeks. The tickets, the dates on the tickets showed

(Testimony of Floyd Parker.)

that they had been delivered to the mill two weeks before.

Q. And whose fault was that in that case?

A. Well, it seems as though Mike and I always got up in the shop and in select, and the other pilers were down at the kiln, and the other two were unit piling, and she was coming in too fast for one crew to take care of up there.

Q. That would be management responsibility, would it not?

A. Well, I don't think it was particularly in this instance. There was always quite a bit of antagonism went on if the right man didn't get the piling or if certain men were told to pile or said they wanted to pile and were told that they wouldn't pile with them.

Trial Examiner Winkler: May I interrupt. You are talking [104] about staining of lumber at a certain time. I mean that's before the period we are interested in. Am I right? I mean Mr. Parker has testified as to the period which he himself was a piler, and that's a little bit before the period we are interested in.

I would like to ask Mr. Parker this. During the period while you were a foreman and until these two men were discharged was there any evidences of green lumber, of staining rather, that came to your attention?

The Witness: No, the only times, as I say, was the time when I was afraid it would stain on the 4- and 6-inch left there.

(Testimony of Floyd Parker.)

Trial Examiner Winkler: That's the instance you spoke about when, first when they didn't do what you told them to and in a few minutes they did; is that correct?

The Witness: They had left the 4- and 6-inch for several days there.

Trial Examiner Winkler: Now I want to ask this. I want to ask this further question. During the period you were foreman in charge of these two men did you have any occasion to criticize the work in any respect? Now I did ask that before but in respect to the matter of loafing, I think. Now I am asking you a general question. Did you have occasion to criticize to them their work in any respect?

The Witness: Well, as I said, there were four, and the [105] matters of stickers.

Trial Examiner Winkler: You spoke to these two men specifically?

The Witness: No, not specifically.

Trial Examiner Winkler: That's what I am asking.

The Witness: No, not specifically, the pilers as a whole.

Trial Examiner Winkler: That's all. Has counsel anything further?

Mr. Tillman: I have not.

Mr. Babcock: That's a natural common object that the foreman keep after the men about the stickers, that's a common occurrence?

A. I don't know how common it is. I should not think it would be a common occurrence. I would think it ought to be done correctly.

(Testimony of Floyd Parker.)

Examination by Mr. Stirling:

Q. Just what are the stickers; what are they?

A. They are the——

Q. How big are they and what are they used for?

A. They are to space the lumber so that the air gets to all sides of the boards.

Q. Are these stickers wood? A. Yes.

Q. How big are they?

A. Well, ours are about an inch thick by 52 inches long. [106]

Q. And would you explain just the first step in piling and what the stickers do?

A. Well, you lay a course of lumber, and then you put your stickers in certain designated spots spaced to certain spacings, then another course of lumber, then another course of stickers until you have got your unit finished.

Q. And don't you have a rack on which that lumber is piled, or do you call it a rack, a metal stand of some sort?

A. You have a piling rack, yes. That is for the straight edge on your unit.

Q. Doesn't it have iron supports on it at which place you put the stickers in?

A. They have sticker markers for places for stickers, yes.

Q. So that it is indicated to a man who is piling where his stickers should go? A. Yes.

Q. On that rack. That's all I have.

Q. (By Mr. Babcock): The stickers go across

(Testimony of Floyd Parker.)

at right angles to the lumber; that's right, isn't it?

A. Length of the boards, yes.

Q. (By Mr. Tillman): You said length of the——

A. Right angles to the length of the wood.

Q. (By Mr. Babcock): Do they also serve a purpose in making the load stable as well as permitting it to dry?

A. Well, they do. That's more or less of a secondary purpose, [107] but the primary purpose of the sticker is to get air around your board for drying.

Q. (By Mr. Tillman): Do you remember when Dant & Russell installed metal piling racks?

A. It was, no, I can't exactly, it was the last, late summer, I guess.

Q. Subsequent to the discharge of Gassner and Christophersen?

A. I think they were probably in the process of being made at that time.

Q. But not installed? A. No.

* * * * *

HENRY J. CHRISTOPHERSEN

a witness called on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Tillman): What is your name?

A. Henry J. Christophersen.

Q. Your address?

(Testimony of Henry J. Christophersen.)

A. 635 Colorado Street, Post Office Box 463, Bend, Oregon.

Q. Henry, what is your occupation right now at the present time?

A. Well, I am actually a handy man or a lumber handler at the Bend Lumber Products.

Q. I believe you have been here this morning during the testimony of the other witness, Mr. Parker? A. Yes.

Q. Would you tell us when you were hired by Dant & Russell?

A. It was in May of 1947.

Q. What was your position?

A. I was hired as a lumber piler.

Q. Did you maintain that same position during your entire employment with Dant & Russell?

A. Yes.

Q. Before taking a job with Dant & Russell had you had any prior experience as a piler?

A. Yes, I had some at Brooks-Scanlon Lumber Company.

Q. How long was that experience?

A. I have worked from 1935 to—I returned from the Army, I lost four years in the Army. I worked there all the time other than that.

Q. Up until the time you got your job with Dant & Russell? A. Yes. [109]

Q. All that time was it as a lumber piler?

A. No, I wasn't actually a lumber piler. Our job was to pile odds and ends, pick up the spilled lumber around the yard and place them in their

(Testimony of Henry J. Christophersen.)

right places. I was working by the day.

Q. Well now, would you tell us what your job was as a contract piler for the Dant & Russell Company?

A. Piling green lumber at Dant & Russell.

Q. Henry, I can't hear you.

A. Just to pile lumber.

Q. I believe it has already been testified for purposes of drying out the green lumber?

A. Yes.

Q. The testimony also shows that the lumber came from another sawmill and was delivered to the plant; that's correct, isn't it? A. Yes.

Q. How was it delivered to the plant?

A. By trucks.

Q. And where as far as physical location is concerned, where would these trucks dump that green lumber?

A. When I first went to work there they would dump it in the yard at various places.

Q. What would determine where they dumped it? A. The type of lumber.

Q. How was the lumber dumped from the truck?

A. Just dumped on the ground.

Q. Were these trucks which could up-end one end and slide the lumber off?

A. Yes, the truck would run out from under the load.

Q. Then after a load had been dumped what would the team of green pilers do then?

A. Well, at that particular time they had two

(Testimony of Henry J. Christophersen.)

machines, and it would either be dumped for a machine or for hand piling, and if it was dumped for hand piling, which I was the youngest crew, my partner and I would pile it.

Q. How do you differentiate machine piling from hand piling?

A. A machine is a machine that carries the lumber to the top of the pile. In hand piling you put the lumber over a bar to the pile.

Q. In both cases is one piler on top of the load?

A. One piler is on the load and the other one on the pile, that is, on bar piling.

Q. I see, I was using the term load in the wrong way. One piler is up on the pile that you are piling?

A. Yes.

Q. And the other piler is down below guiding up the lumber? A. Yes.

Q. Regardless of whether you were using machine or hand piling, did you pile the same type of unit or the same pile?

A. Well, at that time we was square piling. [111]

Q. So you were square piling even if, whether it was by hand or by machine? A. Yes.

Q. What would be the physical dimensions of a square pile? A. Well, 16 by 16.

Q. How high?

A. Well, they would vary. The hand pilers always put on just the first load and occasionally we would put on a second load.

Q. When you say first load are you again referring to the truckload that was dumped?

(Testimony of Henry J. Christophersen.)

A. I am referring to a truckload, yes.

Q. How many loads could you get on one of those square piles?

A. Well, your hand pilers seldom put on more than one of them, but occasionally we did put on two.

Q. Could you ever get more than two?

A. No.

Q. If two loads were put on a square pile, how high would the pile be?

A. Oh, I would say around 8 feet.

Q. In the process of hand piling of square piles was there any practice of who stood on the ground and who got up on the pile?

A. We changed every load.

Q. And what was the situation in the case of machine piling?

A. Well, in machine piling they did the same.

Q. Switched every load? [112]

A. They switched every load.

Q. Is that true of all piling teams?

A. As a general rule, yes.

Q. Did you keep any records of who was on top or who was on the bottom? A. No.

Trial Examiner Winkler: This last question you asked, did you keep records, do you know whether records were kept by anyone?

The Witness: No, I never heard of anybody keeping record of it.

Trial Examiner Winkler: I mean in your experience in piling the number of years you have

(Testimony of Henry J. Christophersen.)

testified to have you ever heard of records being kept of who did what job at a certain time?

The Witness: No, I never did.

Q. (By Mr. Tillman): Now we have been talking about this so-called square piling. Later on after you had been working for awhile did you pile a different type pile?

A. Yes, we went to unit piling.

Trial Examiner Winkler: When did that start, please?

The Witness: Unit piling started sometime in September, 1948, I believe.

Q. (By Mr. Tillman): How did that unit pile differ from the square pile in dimension? [113]

A. A unit pile would be an average of about 48 inches wide and the length of the lumber.

Q. And was there a usual length for lumber?

A. Yes, it was cut 16 feet; however, it was all random length up to 16 feet.

Q. Would a unit normally be 16 feet over-all then?

A. It would be 16 feet on the unit normally.

Q. Now, was there any set height for a unit?

A. Yes.

Q. What was that?

A. It was for the size of the carrier load.

Q. Now, what is a carrier; could you describe a carrier?

A. A carrier is a machine that runs astraddle of a load of lumber and picks it up and hauls it to its destination.

(Testimony of Henry J. Christophersen.)

Q. How does the carrier pick up the lumber once it has straddled a unit?

A. With arms underneath.

Q. Are they metal arms? A. Metal arms.

Q. Where do the metal arms catch hold of the unit? A. On the bottom of the load.

Q. I guess I would assume for the record that the piles are started on blocks, are they?

A. Blocks.

Q. What kind of blocks, wooden blocks? [114]

A. Wooden blocks.

Q. When the carrier picks up a load does it take the blocks with it or just lumber?

A. Yes, it does, it takes the blocks.

Q. Once a carrier has its arms under the unit pile what is the next maneuver of the carrier, just after inserting the arm?

A. Picks it up, hauls it to its destination.

Q. What do you mean by picking it up?

A. It lifts it up so that the blocks will clear the ground, and carries it to its destination.

Q. The lumber sort of goes inside a carrier a little ways? A. Yes.

Q. Then the carrier can transport it wherever it desires in the plant? A. Yes.

Q. Then, I take it, that the size of the unit—I will withdraw that. In unit piling is that done by hand or by machine?

A. It's done by hand.

Q. What determined after the Company adopted the unit type of piling whether or not lumber was

(Testimony of Henry J. Christophersen.)

going to be piled in square pile or in a unit pile?

A. Well, it was all——

Mr. Stirling: Excuse me, before you answer the question, could I hear that question again?

Trial Examiner Winkler: Read the question, please. [115]

(Pending question read by the reporter.)

Mr. Stirling: It seems to me he is asking a question that is a management answer, if I interpret the question correctly.

Trial Examiner Winkler: Well——

Mr. Stirling: I mean, I don't see how the man could know.

Trial Examiner Winkler: We will permit the man to answer. Do you know the answer to that, sir?

The Witness: To my knowledge, it is all unit piling.

Q. (By Mr. Tillman): Then after the unit piling came in there was no longer any square piling?

A. There was no longer any square piling.

Q. After the adoption of the unit piling system where were these truckloads of green lumber dumped?

A. Well, they were dumped, they were all dumped in an open place as you entered the plant toward the yard. I couldn't know exactly how to explain that, but they were just all dumped out in an open place.

(Testimony of Henry J. Christophersen.)

Q. Is that the same place where they dumped it for the square piling?

A. No, where they dumped for the square piling was out where the square piles were.

Q. Where they were going to be piled?

A. Yes, where they were doing to be piled.

Q. How soon after you piled a unit was that unit moved out of [116] your way?

A. Oh, it would vary from anywheres from a few minutes to maybe a half hour.

Q. Going back for a moment to square piling, when you were piling a square did you have any guides to assist you in fixing the size of the square?

A. Actually, we only used lumber.

Q. You only used what?

A. It was 16-foot lumber, and we just piled it the length of the lumber, 16 feet square.

Q. Does that mean there were no other guides than that length?

A. That was the only guide, yes.

Q. And in placement of stickers in square piling was there a guide for the stickers?

A. The majority of the lumber was piled on itself. I might add that outside of your shop and select, all lumber was stickered with whatever it was. I mean what we would use for stickers would be the lumber itself.

Q. What that referred to as cross piling?

A. Yes.

Q. In cross piling then how close together is

(Testimony of Henry J. Christophersen.)

the individual board to the next board on the same course?

A. Oh, it would average approximately two or three inches.

Q. In the unit piling did you have a guide which determined the size of the unit? [117]

A. Yes, we had wooden racks.

Q. And what side or front or ends of the unit was the wooden rack? A. It was on the side.

Q. And how many sides? A. Just one.

Q. How did the rack help you in your piling?

A. Well, it kept the sides straight, one side straight, and they had little sticks about to make markers where the stickers went.

Q. Was there anything to keep the ends straight? A. No.

Q. In placement of the stickers you just had to put a sticker close to where this board was sticking up, or what is it, a little piece sticking up?

A. A little piece sticking up.

Q. Would you place the sticker up against the piece? A. Up against the piece, yes.

Q. How many stickers would there be in the unit pile in one course?

A. It would be four except when we started it we placed five until we got about half way up. Then we used four.

Q. How far from the ends of the unit were the stickers?

A. The end, the first sticker would be, oh, I would say a little over a foot from the end.

(Testimony of Henry J. Christophersen.)

Q. Is that true of both ends? [118]

A. Yes.

Q. Now was there any difference in skill involved in piling a unit and piling a square?

A. Yes, I would say there was.

Q. Which would you consider the most difficult?

A. Square piling.

Q. Why would it be more difficult?

A. Well, you wear an apron and the manner in which you pile it is considerably different than unit piling. You lift your lumber over your apron and drag it over the ends of the pile.

Q. The physical exertion is harder?

A. Yes.

Q. Is the process slower, too?

A. Well, there wouldn't be—when we was doing it I didn't notice too much difference on the amount of tickets or the amount of scale, I should say.

Q. In other words, your earnings ran about the same regardless of which you were piling?

A. I think they ran a little less on unit piling.

Q. Now have you also broken down a pile or loaded it out after it had been standing?

A. Yes, we did a little of it.

Q. When you say break down or tear down a pile, do you have any special name for the operation?

A. It's generally classified as dry loading. [119]

Q. In dry loading what does the man who is working do with the boards once he pulls them off the pile?

(Testimony of Henry J. Christophersen.)

A. The man on the pile shoves them off to the man off the pile.

Q. What does the man on the ground do?

A. He drops it on the load.

Q. You say he drops it on the load. What is the load in that case?

A. It would generally be a carrier load.

Q. Is that a different size than a unit, too?

A. It would be the same size as the unit.

Q. So actually in the process of dry loading you are tearing down and then building up somewheres?

A. When you are dry loading you are tearing down, and as a general rule it goes to the planer.

Q. Yes, but I mean the act of doing that work involves tearing it down and building up on another pile alongside somewhere? A. Yes.

Q. In that sort of work is it necessary to use stickers?

A. Well, actually, no, you don't use any stickers, maybe one for the load or something to hold the load together.

Q. I believe that's all the questions I have at this time on that particular subject.

Examination by Mr. Babcock:

Q. Just one thing that isn't clear to me. When you were using the square pile method how was the lumber then moved to the [120] planer or to the kilns, wherever it was to go?

A. With the carrier.

Q. Did you make up a square pile first and then break it down and send it to the carrier, or send

(Testimony of Henry J. Christophersen.)

it to the kiln? A. Yes.

Q. In other words, all the lumber that came in was made up into square piles in the yard?

A. Yes.

Q. And then were broken down into carrier loads and transported either to the kiln or the planer or wherever it wanted to go?

A. Generally, as a rule, it went to the planer.

Q. Most of your lumber was kiln dried?

A. Air dried.

Q. Air dried. That means yard dried?

A. Yes, it means yard dried.

Q. Was that situation the same after the unit system was used?

A. Well, yes, they are for the part that they are air dried.

Q. Some of it was air dried and some of it was kiln dried?

A. Some of it was air dried and some of it was kiln dried.

Q. But under the unit system, why, it is moved, it is put into carrier loads and moved somewhere, someplace where it is dumped for either the kiln or the yarding? A. Yes.

Mr. Babcock: That's all.

Trial Examiner Winkler: I have one question. Mr. [121] Christophersen, when men are working in teams you mentioned before that they alternate the jobs. I mean, the team members themselves alternate?

The Witness: Yes.

(Testimony of Henry J. Christophersen.)

Trial Examiner Winkler: Now how long does it take ordinarily to make up a pile before they alternate?

The Witness: You are referring to square piles?

Trial Examiner Winkler: That's right, sir.

The Witness: Well, it depends a great deal on the type of lumber, but I think we will say 30 minutes.

Trial Examiner Winkler: Would that be an average figure without being——?

The Witness: I would guess it something like that.

Trial Examiner Winkler: I have nothing further.

Mr. Stirling: Just a couple questions.

Q. (By Mr. Stirling): Didn't I understand from your testimony, Mr. Christophersen, that at the time you came to work for Dant & Russell you were not a lumber piler, that your lumber piling was during the time you were employed by Dant & Russell; is that right?

A. I had piled lumber but not on contract basis.

Q. Not as a—you mean not steady employment?

A. Not as a contractor.

Q. You had piled lumber on an hourly rate basis?

A. On an hourly rate basis, yes. [122]

Q. And then your actual experience as a contract piler was from May, 1947, until July, 1949, when you were discharged, just slightly over two years; is that right? A. Yes.

Q. And during all that time from time to time

(Testimony of Henry J. Christophersen.)

you did day labor work, did you not, at Dant & Russell? A. Occasionally.

Trial Examiner Winkler: May I ask, Mr. Stirling, as part of your affirmative defenses, by way of your affirmative defenses, do you intend to show that one of the bases for a discharge of Mr. Christophersen, at least, was the fact that he didn't do his work properly apart from this three day period now?

Mr. Stirling: Yes.

Trial Examiner Winkler: Do you intend to show that?

Mr. Stirling: Yes, however, I haven't in mind cross-examining him entirely at this time. It was just with respect to questions that had been asked by Mr. Tillman and Mr. Babcock at this time because Mr. Tillman mentioned that he wanted to get some witnesses from out of town, so I was limiting my cross-examination to their questions at this time, and I have only just about three more here. [123]

* * * * *

Q. When you are dry loading as you were doing most of the time during the days on the 13th, 14th and 15th of July, 1949, you are handling a lighter weight lumber than the green, are you not?

A. That is correct, sir.

Q. And also the dry loading can be done faster, that is, per feet per hour than the green; isn't that true, than the green piling? A. Well——

Q. Well, let me put it this way. If you had the same, if you have similar size lumber for dry loading as you have for green piling you would be able

(Testimony of Henry J. Christophersen.)

to dry load more footage of the dry stuff than you would of the green stuff, would you not, than you would be able to pile of the green stuff; isn't that right? A. In some cases.

Trial Examiner Winkler: Would you explain what you mean by that "in some cases"?

The Witness: Well now, for instance, the lumber that we handled in, during the three days involved was what is known as [126] miscuts. It might be two and a half inches thick on one end and a half inch thick on the other end, or it could be that lumber might have been cut in wedge shapes, be two inches thick on one side of the board and a half inch thick on the other. Now, building that into a load is entirely different than any other type of loading they would have.

Q. You have done that type of loading, you have done that type of dry loading before?

A. No, we had never loaded any miscuts before.

Q. You never had? A. No.

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STEVE PIVINSKI

a witness called on behalf of the General Counsel, being first [127] duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Tillman): What is your name?

A. Steve Pivinski.

Q. Where do you live, Mr. Pivinski?

A. 560 Harrison in Lebanon.

(Testimony of Steve Pivinski.)

Q. In Lebanon, Oregon? A. Yes.

Q. What is your occupation right now?

A. Car loader.

Mr. Stirling: Excuse me, I didn't hear the answer.

The Witness: Car loader.

Mr. Stirling: Car loader?

The Witness: Yes.

Q. (By Mr. Tillman): With some firm over in Lebanon, is it?

A. Well, it used to be Santiam Manufacturing Company.

Q. Were you ever employed by Dant & Russell Company? A. Yes.

Q. When were you hired?

A. In August of 1947, I think.

Q. August in 1947? A. I think so.

Q. At the time that you were hired, Mr. Pivinski, what was your position that you were hired in at? A. Piler, green lumber piler. [128]

Q. And have you had any prior experience as a piler before you went with Dant & Russell?

A. Yes, I worked at the Shevlin-Hixon Company, here in Bend.

Q. Did you work with them as a contract piler?

A. Yes.

Q. How many years?

A. About eight years.

Q. On the basis of your experience as a piler could you indicate what qualifications are necessary for piling, for contract piling?

(Testimony of Steve Pivinski.)

A. Well, you would have to be able to stand yard work. There is quite a knack to handling lumber so you can pile it.

Q. What is the knack about it, if you could explain it?

A. Well, I couldn't quite explain it. You just have to know how to handle it.

Q. Knowing how to handle it determines how fast you can pile it; is that it?

A. That's right.

Q. How long does it take to acquire the knack that you speak of?

A. Well, some men it doesn't take very long; others never learn. [129]

* * * * *

Q. (By Mr. Tillman): After you were hired by the Company how long did you work with them?

A. For just about a year.

Q. That would be sometime in August of 1948?

A. That's right.

Q. Did you have a partner during that time?

A. Yes, Christophersen.

Q. Was he the only partner you had?

A. Well, except for probably a day or so.

Q. But he was what you would call your regular partner? A. Regular partner.

Q. In that time did you manage to form an opinion of Mr. Christophersen's work as a piler?

A. I was well satisfied with it.

Q. How would you characterize him as a piler, good, bad, or indifferent or something like that?

(Testimony of Steve Pivinski.)

A. Well, I would say he was better than average.

Trial Examiner Winkler: On what do you base that "better than average"? In other words, how would you judge him as a piler? That's your conclusion. I want to know what facts go into making your conclusion. [130]

The Witness: Well, we have to pile a certain amount of feet in a day to make a decent day's wages, and I don't think our checks ran any under the other pilers.

Q. (By Mr. Tillman): When you say better than average, was he better than average of the various pilers you had worked with in your eight or ten years in there, in that industry?

A. Well, yes, I believe he was better than a few of them I worked with.

Q. At the time you were working there did the pilers have a spokesman on their behalf over grievances or anything like that?

A. Yes, as I remember, Mr. Christophersen.

Trial Examiner Winkler: When you speak of a spokesman can we get a little background. I know there was a union in the plant. It is relevant to this proceedings to know when the union was organized, what the status of the union was, whether you had contract relationships with the Company. I might be better able to understand the case if I had that before me.

Mr. Tillman: It was before this man's time when it was organized. I might ask, do you know whether or not there was a contract between the Company

(Testimony of Steve Pivinski.)

and the Union when you were there?

A. I believe there was.

Q. (By Mr. Tillman): And did Hank occupy any official position in the Union at that time? You say he was spokesman. [131]

Trial Examiner Winkler: This is during the period from August, 1947 to August, 1948?

Mr. Tillman: Yes.

The Witness: He was on the grievance committee.

Q. (By Mr. Tillman): Was there anyone else who was active in the Union during that same time?

Mr. Stirling: I think I would have to object to that question.

Trial Examiner Winkler: It's a little indefinite, isn't it?

Mr. Tillman: I will make it more specific, from the piling crew.

The Witness: Yes, Max was there.

Trial Examiner Winkler: What was your question as finally asked?

Mr. Tillman: From the piling crew, crews.

Trial Examiner Winkler: And the question was who else was active?

Mr. Tillman: Yes, who else was active?

Trial Examiner Winkler: I would like to know active in what respects?

Mr. Tillman: Well, I thought the question was active in the Union.

Trial Examiner Winkler: Well, I mean active

(Testimony of Steve Pivinski.)

in the Union in what respects? I mean, he attended all the meetings or—— [132]

Q. (By Mr. Tillman): I will ask the witness then. In your observation then, Mr. Pivinski, in what ways was Max active?

A. He was on the grievance committee, too.

Trial Examiner Winkler: Can you tell me, you were employed from August, 1947 to August, 1948, and you say that both Christophersen and Max were on the grievance committee. Were they on the grievance committee during this entire period of your employment or part of it, the latter part of it, first part of it?

The Witness: They were on it the latter part of it, the time I was there.

Q. (By Mr. Tillman): How did your employment terminate with the Company?

A. Well, I just quit.

Q. How did you happen to quit?

A. Well, it seemed like they were having a lot of trouble there, and I had an offer of a good job.

Q. Now you say—who was having a lot of trouble?

A. Well, they were bickering about wages and couldn't seem to come to an agreement, and lumber was getting pretty slack.

Q. Who was having this trouble about wages?

A. Well, the grievance committee and the Company officials.

Q. Wages for what employees?

A. For the pilers, and I believe the dry loaders were involved trying to get a price set on the unit

(Testimony of Steve Pivinski.)

piling, and another [133] grievance against that sugar pine. They couldn't set wages on that.

Q. At any time during this talk of grievances on wages and so on did you hear any supervisor comment, make any comment about Max or Hank's activities in the Union?

Mr. Stirling: I will have to object to that because his answer would have to be a statement which would be hearsay.

Trial Examiner Winkler: I will overrule that. You can testify as to your knowledge if you heard anybody say that; not if anybody, if somebody told you that they heard it. Did you hear any supervisor at the plant make any comment about these two men?

The Witness: Well, yes.

Q. (By Mr. Tillman): Which supervisor?

Trial Examiner Winkler: Or what he said.

The Witness: It was Redman.

Trial Examiner Winkler: Who was this?

Mr. Tillman: Redman.

The Witness: Redman.

Trial Examiner Winkler: What is his capacity?

Mr. Tillman: It has been testified by another witness he was manager.

Q. (By Mr. Tillman): Now, was he manager at the time you were there when this statement——?

A. Yes. [134]

Trial Examiner Winkler: Now I would like to know when, who else was present, what was said.

Q. (By Mr. Tillman): As best you can remem-

(Testimony of Steve Pivinski.)

ber, Mr. Pivinski, when was that statement made?

A. I couldn't say just when it was made.

Trial Examiner Winkler: Well, I am not interested in what day or even what month, but to the best of your ability was it early during your employment with the Company; was it during the latter part of your employment; was it during the summer?

The Witness: It was during the summer.

Q. (By Mr. Tillman): That would be——?

A. Summer of 1948.

Q. 1948. Do you recall where that statement was made?

A. Yes, at the dry kiln.

Q. I couldn't hear the answer.

A. Dry kiln.

Q. Dry kiln. Who else was there at the time it was made?

A. I believe Simonson was running the dry kiln then. He was there.

Q. Simonson?

A. Simmons or Simonson, he was there, something like that.

Q. Any other? A. No.

Mr. Stirling: Maybe I am not following, but what are you talking about or asking a question about, a statement? I [135] have never heard from the witness, I have never heard from him that there was a statement made before.

Trial Examiner Winkler: What the statement was I haven't heard yet either.

(Testimony of Steve Pivinski.)

Mr. Tillman: No, we are laying a foundation.

Q. (By Mr. Tillman): Would you now tell us what the circumstances were that you were there at the dry kiln with Redman?

A. Well, it seems there was some trouble about a fellow that got fired there just before that, and Henry went out to the yard to see Max about something pertaining to that case, and I was sitting there waiting for him to come back, and Redman wanted to know why I was not working so I told him the circumstances, and then he said that I would probably have a new partner pretty soon because he had to get that kiln piled.

Q. Do you remember the name of the fellow about whose discharge Hank was away?

A. Bishop.

Q. Bishop. Now, did you hear any other supervisor make any comment about Hank or Max besides Redman? A. Yes, Cook.

Q. Where did Cook make such a statement?

Trial Examiner Winkler: Who is Cook?

The Witness: He took Redman's place.

Mr. Tillman: Cook has been identified as a manager. Was he there at the time he made that statement? [136]

Trial Examiner Winkler: Did Cook follow Redman?

Mr. Tillman: Yes. Where was that statement made?

The Witness: In front of the office.

(Testimony of Steve Pivinski.)

Q. (By Mr. Tillman): Can you place the time possibly with relation to the time you left?

A. It was after this instance.

Trial Examiner Winkler: It would be between the early fall, wouldn't it, or late summer of 1948?

The Witness: That's right.

Q. (By Mr. Tillman): Who was present at that time?

A. All the pilers were there then.

Q. And what was the conversation that took place?

A. I couldn't say. I didn't hear the conversation.

Q. What remarks did you hear then that Cook made? A. Well——

Mr. Stirling: Of course, I will have to object because I say that it is hearsay.

Trial Examiner Winkler: Are you going to testify as to what you heard Mr. Cook say?

The Witness: I heard him say this, but I didn't hear the conversation preceding it.

Trial Examiner Winkler: What did you hear Cook say?

The Witness: He said it would be better off if they got rid of two guys.

Trial Examiner Winkler: Which two guys? [137]

The Witness: Max and Henry.

Trial Examiner Winkler: How do you know at that time that he was referring to Max and Henry?

The Witness: Because he was talking about them.

(Testimony of Steve Pivinski.)

Trial Examiner Winkler: To whom did he make this statement?

The Witness: Well, he just said it. We were all acquainted. We all heard it.

Q. (By Mr. Tillman): You testified you didn't know, that you had not heard the preceding conversation. Did you know—did you have any idea if there was a dispute between management and some of the pilers?

A. Well, it came up over the question of where the lumber was going to be piled the day previous to that. They didn't know where they was going to put it so we went home.

Q. Let me follow you. The day before you had been assigned to pile lumber you didn't know where to pile it?

A. Well, they told us we would have to wait until they decided where they was going to put it.

Q. Who told you that? A. Cook.

Q. Anyone else?

A. I don't believe so.

Q. Then did they tell you where to put it?

A. No, they didn't.

Q. So what happened? [138]

A. We went home.

Q. Did you hear any comment from Cook afterwards, after you had gone home, on the fact that you had gone home? A. No.

Q. Did you ever tear down any lumber at day wages or at day labor?

A. Yes, at Shevlin's.

(Testimony of Steve Pivinski.)

Q. You didn't do it for Dant & Russell?

A. No.

Q. Was the operation at Shevlin the same as at Dant & Russell in the way of piling it and then dry loading it out? A. Practically the same.

Q. Were you on day wages when you dry loaded it at Shevlin's?

A. For a very short time, and then I started contracting.

Q. You did that before you contracted then?

A. Well, no, I contracted the dry loading for about four years.

Q. Oh, I see.

A. Then I went to green handling.

Q. Then you had dry loaded both on day labor and contract? A. Yes.

Q. Was there any difference in the rate of loading or dry loading which you did when you were on day, as compared with when you were on contract basis?

A. Oh, yes, a lot of difference.

Q. How much in terms of quantity? [139]

A. Well, that would be hard to say. There is a lot of difference there. I would say when we was contracting we would load at least three times as much.

Q. As you would if you were on day labor?

A. That's right.

Q. Do you happen to have any idea what the board feet that it would be normal or near average for a contract crew in loading out?

(Testimony of Steve Pivinski.)

A. Well, at Shevlin's we would probably average 60,000 feet a day contracting.

Trial Examiner Winkler: Sixty?

The Witness: Yes.

Q. (By Mr. Tillman): Is that for the team?

A. That's for the team.

Q. Did you do any dry loading at Dant & Russell on contract?

A. Well, we loaded a little there for the dry kiln, yes.

Q: How would your rate of work compare with that at Shevlin's? A. Oh, quite a bit less.

A. How, why would that be?

A. Well, at Shevlin's they had pavement all over the yard, and Dant & Russell was just dirt.

Q. How does pavement make a difference?

A. Well, it is easier for the carrier to drive around, keep their loads a lot straighter.

Q. Why is it that when you were on contract you would load out [140] more than when you were on day labor?

A. Well, you are paid by the thousand there. You have to work about as hard as you can work.

Q. Do you recall how much you could make in a day at Shevlin's dry loading on contract?

A. It's been a long time ago. Wages have changed a lot since then.

Q. In the matter of dry loading did it make any difference in the speed at which you work if the weather is warm or hot or cool?

(Testimony of Steve Pivinski.)

A. Well, I imagine it would.

Q. Well, from your own experience you had.

A. Well, if it's really hot I wouldn't do near the amount of work I would if it was cool. [141]

* * * * *

Q. (By Mr. Tillman): Is it essential in contract dry loading that you know how to pile?

A. No, I guess not.

Q. What do you call the operation involved when you tear down the boards and then the man on the ground stacks it up on the load?

A. I don't understand the question.

Q. I am assuming the situation of dry loading where one man is breaking down the pile, handing it down to his partner on the ground who is forming it into a load. What do you call the operation that the man on the ground is doing?

A. That's loading, what they call loading.

Q. You differentiate between loading and piling then?

A. Well, there is a lot of difference between piling and loading, yes. [144]

Q. During the time that you worked at the plant as a piler from August, 1947 to August, 1948, what do you know about the practice, the practice of any of the pilers arriving late or leaving early?

A. We all rode together, that is, Mike Gassner and Max Gassner, I and Christophersen, but I don't think we were late very often.

Trial Examiner Winkler: Did you live in the same vicinity?

The Witness: Yes.

(Testimony of Steve Pivinski.)

Trial Examiner Winkler: As these other two men?

The Witness: Yes.

Trial Examiner Winkler: Did you have a car pool or something?

The Witness: Yes, we took turns driving our car.

Q. (By Mr. Tillman): If you did arrive late, how late would it be?

A. It would not be but five or ten minutes.

Q. What about a practice of leaving early, was there any such practice when you were there?

A. Yes, we usually quit 10 or 15 minutes early.

Q. What was the reason for that?

A. Well, it's just an established practice with established contractors everywhere to quit a little ahead of the day workers.

Q. Any reason for it?

A. No, no particular reason, they just work harder, and we like to quit a little bit earlier, that's all. [145]

Mr. Tillman: I believe that's all.

Trial Examiner Winkler: Mr. Babcock?

Examination by Mr. Babcock:

Q. During your experience there at Dant & Russell, Steve, was there any difference so far as Max Gassner and Christophersen were concerned with respect to leaving, or quitting early as compared with the other pilers?

A. No, we were all together.

Q. During the time that you worked with Chris-

(Testimony of Steve Pivinski.)

tophersen who was the foreman directly over you?

A. Well, I guess Troutman.

Q. Pardon?

A. Troutman was the only foreman, I think.

Q. Troutman was the yard foreman?

A. Troutman was the yard foreman.

Q. Do you remember any occasions on which he found fault with the work that you were doing in your piling work?

A. Well, I have heard him say a time or two that probably the plant would get along better without Max and Henry.

Q. And on what occasions?

A. Well, just like the kiln piling there.

Q. I mean, did it relate to the work they were doing or to some other activity?

A. Well, they were taking care of the grievances for the Union, and sometimes they had to leave their job. [146]

Q. How many times did you hear Troutman say that? A. Only once I am sure of.

Q. Directing your attention to the matter of the work that you and Hank did as a team, your actual work in piling, was there any criticism of that work by Troutman?

A. No, never criticism of our piling.

Q. From your experience and observation in this dry loading or breaking down of piles of dry lumber and making carrier loads, what would you say as to the average amount of lumber that is handled per day at day work, or would that—if there would be a range depending on the kind of

(Testimony of Steve Pivinski.)

lumber, why, indicate what the range would be.

A. In this type of lumber they are talking about?

Q. No, I am just speaking generally now, not of miscut lumber but of other lumber.

A. Well, there is a little difference there, too. They loaded part of their lumber on trucks and part of it on carrier blocks. I would say if they were loading it on trucks about two big truckloads would be a day's work.

Q. What do you mean, what kind of trucks do you mean?

A. Just the way they haul it into the yard.

Q. Oh, I am talking about the process of breaking down the piles and then putting them on carrier blocks. A. On carrier blocks?

Q. Yes, at day work. [147]

A. Well, you might get a load an hour.

Q. How much would that be?

A. Oh, it will depend on what they were loading, if you are talking about the footage.

Q. I see, well, would the amount that they can load vary depending on whether they were handling 4 and 6-inch stuff as compared with 12-inch, for example?

A. Oh, yes, it would be.

Q. Which would be fastest in terms of footage, if you handle the wide stuff or the narrow stuff?

A. The wide stuff.

Q. That's all.

Trial Examiner Winkler: I have one question. You mentioned that Troutman said that they would

(Testimony of Steve Pivinski.)

be better off without Max and Henry, and you said that was connected with a grievance.

The Witness: I mean in general that he was referring to a grievance at the time because Henry went out to see Max about some question that came up at, in the Bishop case.

Trial Examiner Winkler: Was that the discharge case?

The Witness: Yes.

Trial Examiner Winkler: And you say it was clearly understood by you at least that when Troutman mentioned that to you that he was referring to Max's and Henry's work in the Bishop case? [148]

The Witness: That's the way I took it, yes.

Mr. Tillman: Are we confusing Troutman with Redman?

The Witness: No, it's over the same case.

Mr. Stirling: I didn't get that. What is this Bishop case? I have not heard the name mentioned before.

The Witness: It was a foreman down there who was discharged for—there was some——

Examination by Mr. Stirling:

Q. He was not a piler; he was a foreman?

A. Uh-huh.

Q. When was this that he was discharged?

A. I couldn't say exactly when that happened. That was during the summer there before, I think.

Q. During the summer of what year?

A. It must have been 1948, I think.

(Testimony of Steve Pivinski.)

Q. Could it have been during the summer of 1949, do you mean?

A. No, I wasn't there then.

Q. Didn't you say you worked from about August—oh, you worked August, 1947, to August, 1948? A. Yes.

Q. Then this that you are referring to was during the summer of 1948. A. I think so.

Q. And do you mean that some matter was, that the thing was discussed between Christophersen and Gassner or something like [149] that; is that what you mean by that? A. That's right.

Q. You mean they were talking about it among themselves; is that what you mean when you say there was talk about it, or what do you mean?

A. I think Bishop came over there to see them, and they got to talking, was talking about it.

Q. Why did Bishop come to see them?

A. They were members of the grievance committee, and they were trying to get him reinstated. [150]

* * * * *

Q. Right afterwards. Who were the managers of the plant while you were employed there?

A. Well, Anderson was there.

Q. When was he there?

A. When I started work there.

Q. Were there any other managers there?

A. Redman and then Cook. Cook was the manager when I left.

Q. Cook was the manager when you left?

A. Yes.

Q. Now you were asked to tell a statement that

(Testimony of Steve Pivinski.)

Cook made in the presence of all the pilers, and the statement, as I understand it, was that they would be better off if they got rid of two guys. As I understand it also, you didn't hear any conversation that went on prior to the time that statement was made, any conversation; is that so? A. That's right.

Q. So you don't know whether or not when he made that statement, you don't know who he was referring to when he made that statement then, do you? [153]

A. No. I actually do not. [154]

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Q. (By Mr. Tillman): Regardless of whether or not Mr. Christophersen and Max Gassner were both on the grievance committee at the time of this Bishop incident, the reason why Hank was absent from the job when Redman came up was because he was conferring on the subject of Bishop; isn't that true?

A. That's right.

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HERMAN KRAMER

a witness called on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Tillman): What is your name?

A. Herman Kramer.

Q. Where do you live, Mr. Kramer? [156]

A. Burns, Oregon.

Q. Burns, Oregon?

Trial Examiner Winkler: Please speak up.

Q. (By Mr. Tillman): What is your occupation?

(Testimony of Herman Kramer.)

A. Piling lumber.

Q. For what company?

A. Wolverine, Wolverine Western.

Q. Were you ever employed by Dant & Russell?

A. Yes.

Q. What time?

A. Let's see, it was the last, I think it was the last part of March, 1947.

Q. What position were you hired in at?

A. Piler.

Q. Had you been a piler before that?

A. No, not too much.

Q. How long had you worked for the Company after you were hired?

A. Let's see, I left there the first of August in 1948.

Q. During the time that you were there what partners did you have at Dant & Russell?

A. Well, the first one I had was Christophersen, and I worked with him about three months, and then I went on a machine with Mike Gassner.

Q. Did you continue with Mike until your employment ended? A. Yes. [157]

Q. Now in the three months or so that you were with Hank Christophersen what opinion did you form of his work as a piler?

A. I figured it was all right.

Q. Were there any criticism of the team's piling while you were teamed up with him?

A. Not that I know of.

Q. As a group, do you know whether or not the pilers had more than the usual number of disputes

(Testimony of Herman Kramer.)

with management as compared with other employees?

Mr. Stirling: I object to that.

Trial Examiner Winkler: Objection sustained.

Q. (By Mr. Tillman): During the time that you were employed there did the pilers have disputes with management, grievances? A. Yes.

Q. What would they involve?

A. Well, the first one, let's see, I think that was the first one, was over where we should pile the lumber, and it was either, had to go in the yard or in the kiln, and they didn't seem to know where it went so we just went home.

Q. Were you in on any meeting in which management was reprimanding the pilers for going home?

A. Well, this, no, I didn't hear nothing there outside—on this certain one outside of Redman saying if we could get rid of these two guys a lot of this trouble would be over.

Q. When did Redman say that? [158]

A. It must have been a month or six weeks before I left there.

Q. Where was the statement made?

A. Right by the kiln, dry kiln.

Q. Who was around there at the time?

A. Well, Hank and Max and I was around there. If anybody else heard it or not I don't know. There was another fellow there, Simonson.

Q. Do you know what—were you taking part in the conversations at that time?

A. No, I just happened to be there.

(Testimony of Herman Kramer.)

Trial Examiner Winkler: To whom did he make this remark?

The Witness: Well, he must have made it to them guys.

Q. (By Mr. Tillman): Did you hear any of the conversation preceding Redman's statement that you testified about?

A. No, they went over to find out where to pile this lumber, and they finally come over there.

Q. Was Redman talking to anyone in particular when he made this statement?

A. Well, Hank and Max was there. I don't know, I ain't sure whether this Troutman was there or not. He could have been there, too.

Q. And when he made the particular statement whom did he appear to address himself?

A. Well, I don't know if he was addressing anybody, or it could have been everybody. [159]

Q. Do you know to whom he was referring?

A. I mean he was referring to Hank and Max.

Q. Why did you know that?

A. Well, they was on the committee. They was the ones that brought that up about that piling there.

Q. Well, aside from Redman, did you ever hear any other supervisor make any comment about the activities of Hank and Max?

A. Yes, I heard Cook.

Q. When did Cook make the statement?

A. Well, it was on about the same thing, we went home.

Q. When was it?

A. Well, it would be about a month or so before I

(Testimony of Herman Kramer.)

left there. It must have been in July, sometime, of 1948.

Q. Where was that statement made?

A. It was made right in front of the Company office.

Q. Who was there?

A. Well, all the pilers, there was I and Steve and Max and Mike and Hank.

Q. What was the occasion for the gathering at that place?

A. Well, I don't know, we had to get out to punch our time clock there, you see, and I guess that's how they got to talking with Cook. They went in to see him.

Trial Examiner Winkler: Who went in to see him?

The Witness: Max Gassner, I think he went in to see him about this piling. [160]

Q. (By Mr. Tillman): Then what happened, if anything?

A. Well, I don't know, they talked it over or something.

Q. Where was Cook when he made the statement that you heard?

A. Outside the office.

Q. What was the statement?

A. Well he said, "If we could get rid of you two guys we could get along pretty good here." That was addressed to Hank and Max.

Q. He was addressing himself to them?

A. Yes, that's right.

Q. How did your employment come to terminate?

(Testimony of Herman Kramer.)

A. Well, I didn't like the way it was going there so I just started looking for another job.

Q. What was it you didn't like?

A. Well, the way they was working on the Union guys, especially Hank and Max. I figured we would all wind up in the same shape.

Q. When you say they were working, who was "they"?

A. The boss, Redman, and, well, Cook wasn't there, but after he come it was the same thing.

Q. During the time that you were working as a contract piler were you ever assigned to day work dry loading?

A. No, I don't think so.

Q. Have you done dry loading anywhere else?

A. Some, not very much though.

Q. I believe that's all.

Trial Examiner Winkler: Mr. Babcock? [161]

Examination by Mr. Babcock:

Q. How long have you worked as a contract piler since you left Dant & Russell?

A. Ever since the first of August, 1948.

Q. Altogether then you have had approximately or a little less than three years experience in contract piling; would that be about right?

A. That's right.

Q. Is that experience, since you left there, been with the same company that you are now working for? A. Yes.

Q. How did you happen to go to work with Christophersen in the first place as a partner?

(Testimony of Herman Kramer.)

A. Well, I went down there and got the job as piler. Then they told me to go and pick my own partner so I come back and got Hank.

Q. How did you happen to get him?

A. I knew him, and I worked with him before.

Q. I see, what kind of work?

A. We was working out in the yard there. Well, we done a little piling, too, cleaning up, one thing and another.

Q. That was there?

A. Right here at Brooks-Scanlon.

Q. You had had some piling experience then at Brooks-Scanlon? A. Yes. [162]

Q. How long had you worked at Brooks?

A. Let's see, I went to work there in, I think it was in the spring of 1939. I quit there in 1942.

Q. And did you work around the yard?

A. That is, well, the yard and green chain steady, the only place I did work.

Q. Were you brought in touch with piling work while you were there? A. Yes.

Q. And observed the piling work. Now, as a contract piler what is your regular job?

A. Piling lumber.

Q. What?

A. Just piling green lumber.

Q. And on what occasions does the contract piler do something besides working on a contract?

A. Oh, sometimes over there where I work if you run out of lumber they will tell you to stick around, monkey around, just get your time in.

(Testimony of Herman Kramer.)

Q. Are good contract pilers hard to find; do you know? A. Well, they are over there.

Q. Do you know whether it's a practice in this area in lumber yards to give contract pilers extra work to give them time when this business, when there is nothing further to do at contract work? [163]

A. Well, over there they will.

Trial Examiner Winkler: You say "over there". Do you mean your present job?

The Witness: Yes.

Q. (By Mr. Babcock): Now based on your experience generally in the industry, state whether when a contract piler is given temporary work at day rates there is any check made on the production by the foreman?

A. Not any place I have been.

Trial Examiner Winkler: You are only testifying so far as you know?

The Witness: That's right.

Q. (By Mr. Babcock): At Dant & Russell did you know of occasions when contract pilers did day work to fill in or to get extra time?

A. Well, I don't remember of doing any. I don't know.

Q. Well, I might say any other, any other pilers?

A. Yes, we had one spare crew. They were piling and worked by the day or dry load or do something.

Q. Do you know whether any check was made on their production?

A. Not that I know of.

Q. Have you ever had occasion to do dry loading?

(Testimony of Herman Kramer.)

A. I have had occasion but I didn't do it. I don't like it.

Q. What is the reason for that?

A. It's too rough on the back for me. [164]

* * * * * *

Mr. Babcock: Yes, well, does handling the miscuts in dry loading and in making carrier loads out of it present any problem with respect to making your loads? A. Oh, yes.

Q. (By Mr. Babcock): What are those problems?

A. Well, it's a little harder loading. There is nothing even. You can't keep your load level.

Q. Does it take longer to make loads with that kind of lumber? [167] A. Oh, yes.

Q. What about the scale on misfits as compared with regular dimension?

A. Well, it's pretty hard; there ain't no dimension at that, you know. It's supposed to have one kind and it isn't anything.

Q. In your experience what practice has been followed in log scaling in contract work for that sort of lumber?

A. Well, I tell you, that stuff is supposed to be 5-quarter. It is everything. We piled it as 5-quarter for double scale.

Trial Examiner Winkler: Are you talking about dry loading now?

The Witness: No, green.

Trial Examiner Winkler: We are not interested in the green, are we?

(Testimony of Herman Kramer.)

Mr. Babcock: Only to the extent that it's similar to—do you know whether the practice has been followed in dry loading?

A. About the same way, double scale, they give pilers for that.

Trial Examiner Winkler: Let's see, there is double scale for dry loading?

The Witness: That's right, on miscuts.

Trial Examiner Winkler: On miscuts. [168]

* * * * *

Examination by Mr. Stirling:

Q. Do I understand you to say that you have not done any dry loading at the Wolverine plant yourself?

A. No, oh, very little, but not much, not enough to——

Q. Then when you speak of miscuts what do you mean by miscuts?

A. Well, it's just miscut lumber, it's miscut. It's supposed to be a certain size, and it isn't, too thin, too thick.

Q. And might it be one width at one end, another width at the other end of the board?

A. That's right.

Q. And as a result, in loading that if they were being dry loaded on a piece work basis isn't it possible that the people loading it would get more footage credit than there actually was in the wood? Do you understand my question?

A. Yes, that's right. [169]

(Testimony of Herman Kramer.)

Trial Examiner Winkler: May I just clarify that a bit? Do you mean they got more footage credit; let's say, for example, that they loaded 10 feet. Would they be given credit for 20 feet, or would they be given credit for 10 feet but receive a premium or a bonus, say, for loading 10 feet of miscut wood? Which is it now, would they be given credit for 20 feet or 10 feet at a double rate?

The Witness: Over there the scale has got to go in whatever it——

Trial Examiner Winkler: In other words, it's ten feet at a double rate?

The Witness: It's 10 feet at a double rate.

Q. (By Mr. Stirling): When you say 10 feet of miscut, you mean that it might be 10 feet with a wide width at one end and a narrow width at the other? A. Yes.

Q. And, actually, you would be getting credit in being paid for it for 10 feet at that widest width all the way through. That's my point, isn't that——?

A. Well, I don't know just how they scaled it.

Q. When did you say you started to work at the Wolverine plant or mill?

A. First of August.

Q. First of August?

A. That's right. [170]

Q. When did you leave Dant & Russell?

A. First day of August.

Q. Same time, was the job offered to you over there at the Wolverine plant?

A. That's right.

(Testimony of Herman Kramer.)

Q. You mentioned this statement of Redman's at the kiln. A. That's right.

Q. And you stated that a fellow by the name of Simonson was there. A. That's right.

Q. And that Christophersen and Gassner were there? A. Yes.

Q. Was Pivinski there?

A. I don't remember if he was or not.

Q. Well, do I understand that there could have been others around there at the time then?

A. I imagine there could have been, I don't know.

Q. I understood from your testimony that there were no others there.

A. I says those are the ones. I don't know, I don't know if there were others there or not. There could have been.

Q. Where were you with respect to Redman when the statement was made; how far away were you from him?

A. Oh, I wouldn't say over 30 or 40 feet if it was that far.

Q. Did he say it in a conversational tone? [171]

A. No, they was talking plenty loud so that you could hear.

Q. Now you said he made the statement to them guys. Who are you referring to?

A. Max Gassner and Christophersen.

Q. He made it directly to them?

A. That's right.

Q. Did you understand it was at that time to be

(Testimony of Herman Kramer.)

a warning to them that they were to improve their work?

A. Well, the way I got it, he said, "We would be better off without you around here, if we got rid of you," or something along that order.

Q. And that was at what time in the year?

A. Well, that must have been the last of June or the first part of July sometime.

Q. Of what year? A. 1948.

Q. Of 1948?

A. That was just before I left.

Q. And do you know whether or not Christophersen and Gassner were on the grievance committee at that time?

A. That's right, they was.

Q. They were?

A. They were, both of them.

Q. That was, you say, in May or June of 1948?

A. Well, it had to be either June or the last part of June or the [172] first part of July.

Q. Both of them were on that grievance committee at that time?

A. So far as I know, they was.

Q. Are you positive about that?

A. I couldn't say too sure but I think they was.

Q. Is it possible that one of them could have been a member of the grievance committee and the other not at that time?

A. Well, it's possible.

Q. Is it possible that neither of them could have been a member of the grievance committee?

(Testimony of Herman Kramer.)

A. No, I know one of them was.

Q. Now you said Gassner went into see Cook sometime in July, 1948, about this piling, and that time Cook is supposed to have said a statement, made a statement to all the pilers. What do you mean, he went in to see him about this piling? Perhaps I didn't understand or hear you right.

A. Well, we went to see him the day before.

Q. Now "we" or——?

A. Or those guys, Hank and Max, it was one of the two of them.

Q. Those two? A. Right.

Q. This was in July, 1948?

A. To find out what to pile in the kiln.

Q. To find out what to pile in the kiln?

A. In the dry kiln. [173]

Q. Yes.

A. Well, they didn't seem to know so we went home. Well then, the next morning when we come back that's when this, he made that statement.

Q. Well, I understood you to say that Max and Gassner went in to see Cook about this piling and that out in front of the place Cook made a statement to all the pilers that, "if we get rid of you two we might get along pretty good." Now is that statement something that was made that day that Max Gassner went in?

A. I couldn't say he made it to all of us, but I heard it.

Q. Was that inside?

A. No, that was outside.

(Testimony of Herman Kramer.)

Q. Was that made at that time that Max Gassner went in? A. That's right.

Q. Well then you said the next day they came back and something else happened. What does tomorrow have to do with it then?

A. We went home the day before on account of we didn't know what they wanted to put in the kiln, and this happened——

Q. Who do you mean by "they"?

A. There was I, Hank, Steve, Max, Mike, and one of the pilers, the other one lived over by Prineville.

Q. I mean, what do you mean by "they" didn't know what they wanted to put in the kiln?

A. I mean Troutman, Redman, the whole works there that was the [174] boss.

* * * * *

Examination by Mr. Tillman:

Q. I think there is some confusion in the record on what the meaning of scale is. Evidently it has shown up in two different matters. In one answer when you used the word scale you are talking about your pay rate, aren't you, the amount of money you are getting on contract basis? A. Yes.

Q. When you say double scale, you are getting double the normal? A. Double pay scale.

Q. And scale also is meant in determining how many board feet are in a certain board?

A. Yes, well, they turned the scale in same as it would be 5-quarter.

(Testimony of Herman Kramer.)

Q. I mean scale does have that meaning, to scale up a board to see how many board feet is in it?

A. The double scale we get is the price, is the money.

Q. Regardless of what the board scale was you get double scale? A. Yes.

Q. O.K.

Q. (By Mr. Stirling): You say "We get the double scale," and as I understand it from your previous questions you said you did not dry load over at the Wolverine.

A. I said we piled it.

Q. Contract piled it?

A. Yes, contract piled it.

Q. And for contract piling misfit lumber you were paid double scale; is that right?

A. Yes.

Mr. Stirling: That's all.

Examination by Mr. Babcock:

Q. Did you also testify that the loaders got double scale on it, too? A. That's right.

Trial Examiner Winkler: By loaders you are referring to dry loading?

Mr. Babcock: Yes.

Q. (By Mr. Babcock): At the time of this incident in which the men went home, a dispute about what they were to do and they went home, was Cook or Redman the manager?

A. Let's see, it was Cook, I guess it was Cook.

Q. It was Cook? A. It had to be Cook.

(Testimony of Herman Kramer.)

Q. Was that the later of the two incidents you talked about?

A. That's right, the later of the two.

Q. And the other incident when Redman was the manager, what did that dispute arise over?

A. That was putting lumber in the kiln but they didn't know what to put in there.

Q. I see, a similar situation?

A. Just about the same thing.

Q. In addition to these two meetings had there been other disputes or grievances that involved the piling crew which had been taken up by Gassner or Hank?

A. Well, there was one there. I remember something about Bishop. Hank and Gassner were both on that. What it was all about I don't know.

Q. He is not on the piling crew?

A. No, Bishop, no.

Q. Were there any discussions or disputes with respect to scale or the rates?

A. Yes, that come up. They shipped in a bunch of sugar pine, and we told them what we would pile it for, and they agreed to that.

Trial Examiner Winkler: Who is the "we"?

The Witness: The pilers. [177]

Q. (By Mr. Babcock): The piling crew?

A. The piling crew.

Q. Who spoke for the crew?

A. Hank and Max.

Trial Examiner Winkler: When was this?

The Witness: Well, that had to be just before I

(Testimony of Herman Kramer.)

left there, but it must have been in July.

Q. (By Mr. Babcock): Was there any change made while you were there with respect to scale for 4 and 6-inch stuff?

A. Well, we used to get more scale for it, but at last, why, they didn't want to pay any more for it so——

Q. Was there any dispute or discussion between either the Union committee or piling crew and the Company on that?

A. Well, they brought it up a couple times, I guess, but I don't remember.

Q. Who spoke for the Union on that occasion, for the pilers? A. Hank and Max.

Mr. Babcock: That's all.

Examination by Mr. Stirling:

Q. One more question. During the summer of 1948 do you know who all the members of your grievance committee were at the Dant & Russell plant?

A. Well, the last ones I remember was Hank and Max.

Q. Well, you told me before they were both on. You knew that one was on but not necessarily both?

A. Well, the last two——

Q. Now you had more than two on your grievance committee, didn't you, for the entire Local?

A. The last three, I would remember, was Hank, Max and Parker.

Q. The last time?

(Testimony of Herman Kramer.)

A. The last time there was three.

Q. Do you know of those three being the actual members of the grievance committee, or is it just your impression that they were members of the grievance committee, or did you just hear Hank and Max voice their ideas and think that they were members of the grievance committee?

A. Well, I ain't sure about those two, but I know Hank was on it. That's for sure.

Q. When you say that the piling crew took something up with the employer, that wasn't the grievance committee taking up something with the employer, was it? That was the piling crew as such?

A. Our committee was from the piling crew. They are the ones.

Q. How many pilers did you have?

A. There was six of us.

Q. And all of you took the thing up?

A. No, these two guys spoke for us, Max Gassner and Christophersen. [179]

* * * * *

Mr. Tillman: I will have Mr. Christophersen resume the stand to complete his direct examination.

HENRY J. CHRISTOPHERSEN

was recalled to the stand on behalf of the General Counsel, and, having been previously sworn, further testified as follows:

Direct Examination (Continued)

Q. (By Mr. Tillman): Just for the purposes of the record, you have been previously sworn and

(Testimony of Henry J. Christophersen.)

started to testify already. During your employment at Dant & Russell did you load out on any other occasions besides the occasions of July 13th, 14th and 15th?

A. Yes, during the winter we loaded out some dry lumber.

Q. When you loaded out at that time were you paid on your [180] contract basis or on the day labor basis? A. On day labor basis.

Q. How did it happen that you loaded out sometime in the winter?

A. Well, there wasn't any green lumber coming down, and we had been home for a few days, and we happened to go down there and asked if there was anything doing, and they suggested that we load some dry lumber.

Q. Who was the "they" that suggested it?

A. I believe Pete Troutman was the foreman at that particular time.

Q. Now this occasion in winter, was there only just the one occasion, or did you dry load on other occasions?

A. Well, previous to that we had loaded green lumber, taken green lumber out of the yard to be put into the kiln.

Q. Taken it off one of the square piles?

A. Taken it off the square piles for the kiln.

Q. On what basis were you paid when you did that kind of work?

A. That was paid at contract labor, the same as piling.

(Testimony of Henry J. Christophersen.)

Q. Mr. Christophersen, how were you notified of your discharge by Dant & Russell?

A. I was notified Monday morning. I went to punch my card. Parker came out and said he had bad news.

Q. Before you go into that now who was with you at the time on Monday morning?

A. Max Gassner. [181]

Q. How early in the morning was it?

A. I believe it was just 7:00 o'clock.

Q. What was your precise location; where were you standing? A. At the time clock.

Q. Go on then with that statement of Parker.

A. Parker made the statement, he says, "I have bad news for Hank and Max." I says, "Well, what is it?" He says, "We have your checks ready." I asked him what is the reason. He said, "You didn't do enough to suit me."

Q. Any other conversation?

A. He says, "I will get your check for you." I says, "You don't have to do that. I can pick it up myself when I get ready," but he went in and got them and brought them out.

Q. Now during the time that you were employed at the Company were you a member of any union?

A. I was a member at all times.

Q. And what union was that?

A. The I.W.A., C.I.O.

Q. The Local? A. Local 6-7.

Q. Had you been a member before you went to work for the Company? A. Yes.

(Testimony of Henry J. Christophersen.)

Q. During the time that you were employed by Dant & Russell did you engage in any union activities?

A. I was member of their standing committee.

Mr. Stirling: I object to that as a leading question, not appropriate for Mr. Tillman's own witness, after all, that's the crux of the deal. It's a leading question.

Mr. Tillman: It seems to me the question is calling for a conclusion more than leading.

Mr. Stirling: Well, it's both.

Trial Examiner Winkler: Well, Mr. Christophersen, will you please describe what your activities were in the Union?

The Witness: Well, most of the time when I was employed at Dant & Russell, the greatest share of the time I was a member of the standing committee.

Trial Examiner Winkler: What is the standing committee?

The Witness: They handle the grievances that might occur around the plant.

Q. (By Mr. Tillman): When were you first elected to the standing committee?

A. It was in, shortly after I went to work there.

Q. Well, can you make it more definite than shortly?

A. I would say it was in the first part of June, 1947, I believe it was.

Q. At the time you first became a member of the standing committee were you elected at the regular term?

(Testimony of Henry J. Christophersen.)

A. I filled out an unexpired term of some other member. I don't remember who it was.

Q. When did that—strike that—was there a certain time of [183] the year that elections were held for the standing committee? A. Yes.

Q. And when was that?

A. That was in, I believe their elections are held in June. The new officers take their posts at some time in July, the first meeting in July, I believe it is. I am not positive.

Q. How many members were there on the standing committee when you were there?

A. When, well, when I first was there Max was the most active.

Q. No, I mean in terms of numbers how many members constituted the committee?

A. Three.

Trial Examiner Winkler: Before you go on I would like to know a little more specifically for how long a time Mr. Christophersen served on this committee.

Mr. Tillman: Yes, I was going to follow it up. These are background.

Q. (By Mr. Tillman): What was the function of the standing committee?

A. To handle all the grievances between the Company and the Union.

Q. Then when you were first elected to office do you recall who was on the committee besides yourself?

A. Max Gassner and Joe Gannon.

(Testimony of Henry J. Christophersen.)

Q. How long did you continue on the committee following your [184] first election?

A. Well, I couldn't say exactly there. I served that unexpired term.

Trial Examiner Winkler: That would be until July, 1947?

The Witness: That was somewheres along until the following meeting.

Q. (By Mr. Tillman): Were you re-elected to another term?

A. Right at present it isn't quite clear in my mind after I served temporarily whether I was re-elected or not. I was trying to think when the contract was negotiated. I remember distinctly of negotiating the contract which was in effect in 1948-1949. I believe that the contract expires in April.

Q. I wonder if I might refresh the witness' recollection by showing him the contract? (Document presented to witness.) I will ask you if looking at the contract refreshes your recollection to any extent?

A. This was—yes, at that particular time the contract was signed, that is when my term expired.

Trial Examiner Winkler: What is the date of that contract?

Mr. Tillman: May 12, 1948, the signatures were executed.

Trial Examiner Winkler: May 12, 1948. Were you a member of the grievance committee until May 12, 1948?

The Witness: Yes.

(Testimony of Henry J. Christophersen.)

Trial Examiner Winkler: That is, from June, 1947 to May 12, 1948; is that correct? [185]

The Witness: No, there is a time in there when I was not because at the time they had the strike down there I wasn't a member of the standing committee.

Q. (By Mr. Tillman): Well, when was the strike, what season, we will say?

A. It was in the fall of the year of 1948.

Q. All right, after the strike at any time were you on the committee? A. Yes.

Q. So you were on the committee then at one time. Then you were off, and you got back on?

A. I was asked to fulfill the term of Lawrence Toomey.

Q. Do you remember approximately when you got back on the committee?

A. That was after the strike, I would say possibly in January following the strike.

Trial Examiner Winkler: That's January, 1949?

The Witness: 1945, yes.

Trial Examiner Winkler: And you remained on the grievance committee until your discharge?

The Witness: Yes.

Trial Examiner Winkler: The thing I have in mind is that we have testimony to the effect that Mr. Christophersen was a member of the grievance committee during various incidents.

Mr. Tillman: Yes. [186]

Trial Examiner Winkler: I would like to establish whether or not he was a member of the griev-

(Testimony of Henry J. Christophersen.)

ance committee at that time. That's the reason for my wanting to pin this down a little bit more specifically.

Mr. Tillman: That will probably come out when he testifies.

Trial Examiner Winkler: I mean, while we were on the subject of this grievance committee, of this tenure of office, can't we establish that now?

Q. (By Mr. Tillman): There has been a statement in your testimony to the effect that you served through May of 1948.

Trial Examiner Winkler: No, he started in June, 1947; is that correct?

Mr. Tillman: Yes.

The Witness: Yes.

Trial Examiner Winkler: And you served continuously until when, until May, 1948; is that correct, until that contract was executed; isn't that your testimony?

Mr. Tillman: No, his testimony was he was on the committee at the time the contract was negotiated so the next question is how long after the contract was negotiated did he continue on the committee. In other words, did you serve out your full term?

A. My term expired then in June.

Q. Then in June of 1948? A. 1948. [187]

Q. At which time you left the committee?

A. I declined to be renominated or elected on the committee.

Trial Examiner Winkler: Is it true then he was

(Testimony of Henry J. Christophersen.)

on the committee from May, 1948 to the date of the execution of the contract until——

Mr. Tillman: Until June.

Trial Examiner Winkler: Until July, 1948?

Mr. Tillman: Until July, 1948.

Trial Examiner Winkler: In other words, we have May, June, July, a three months period?

Q. (By Mr. Tillman): Do you know what part of July the new committee customarily took over?

Mr. Stirling: It seems to me he said June, 1948. You are stretching it a little bit.

Mr. Tillman: The witness previously testified members were elected in June and took office the first meeting in July.

Q. (By Mr. Tillman): Now do you happen to know if there was any scheduled meeting for the first period in July?

A. That would be at the regular meeting.

Q. I mean, what part of July, early or late?

A. I don't remember at this time whether our regular meeting was the first or second Monday in July, that I don't remember.

Q. I see.

Trial Examiner Winkler: Can we ask this, whether he was a member of the grievance committee from July, 1948 until [188] December, 1949? Do you see the picture?

Mr. Tillman: Well, he has already testified he was not.

Trial Examiner Winkler: He was not?

(Testimony of Henry J. Christophersen.)

Mr. Tillman: That's right, he testified that he came back on the committee——

Mr. Babcock: You said December, 1949. Did you mean December, 1948?

Trial Examiner Winkler: 1948.

Mr. Tillman: He has testified he was back on the committee in January or thereabouts, January, 1949.

The Witness: Sometime after January.

Mr. Tillman: Sometime after January?

The Witness: Yes.

Q. (By Mr. Tillman): Well, after getting back on the committee did you serve on the committee until your discharge? A. Yes.

Q. Now forgetting the committee for just a moment, did you take any part in any activities respecting the Union before you were a member of the committee?

A. What was that question?

Mr. Tillman: I will ask the reporter to read the question.

(Pending question read by the reporter.)

The Witness: Only on one occasion.

Q. (By Mr. Tillman): When was that?

A. One of Bailey's men—— [189]

Q. No, I say when?

A. Well, that was right shortly after I went to work for Dant & Russell.

Q. All right, what was the activity you were engaged in?

(Testimony of Henry J. Christophersen.)

A. One of Bailey's men refused to join the Union, and Max asked me one day if I would go over and talk to Bailey about the guy.

Q. Has Bailey been identified in the record?

A. I believe he has as molding superintendent.

Q. All right, did you go over and talk to Bailey?

A. Yes.

Q. What was your discussion with Bailey?

A. We asked him if——

Trial Examiner Winkler: By "we"; you mean you and Max?

The Witness: There was Max and I, and I believe Joe Gannon was with us.

Q. (By Mr. Tillman): Again I say what was your discussion with Bailey?

A. We asked him if this man had refused to join, and according to his contract was to be a member of the Union, that we expect him either to join or get off the job.

Q. What action, if any, did Bailey take?

A. Bailey refused to do anything about it.

Q. Did that end the matter?

A. No, we went to Victor Anderson and explained the situation to him. He says, "Well, that's according to the contract, and [190] the man will either have to join or leave."

Q. Now after being elected to the grievance committee to serve out this unexpired term and then from there on to serve out a full year of the regular term, did you participate in any grievances between the Union and the Company?

(Testimony of Henry J. Christophersen.)

A. No.

Q. I mean while you were a member of the committee?

A. While I was a member of the committee, yes.

Q. All right, will you in a sort of a chronological fashion indicate what activity or what grievances you took up or participated in?

A. Well, there was lots of small grievances that really didn't amount to much.

Q. Let's just take some big ones then.

A. I remember one of the biggest issues was over Bishop who had been discharged.

Mr. Stirling: Excuse me a minute. Didn't I understand that Bishop was discharged sometime in the end of 1948, and this gentleman has testified that he was not on the committee after July of 1948?

Mr. Tillman: Well, I think you have assumed that because a man is not on a grievance committee he cannot participate in a grievance——

Mr. Stirling: No, I have not assumed that. I understood your question, what was these grievances that you took up while [191] you were a member of the grievance committee.

Mr. Tillman: Yes, well, in any event, the witness was pressed about an incident which I thought was out of line chronologically. If I may withdraw the question and reframe it.

Q. (By Mr. Tillman): Let's take it on the basis of managers who were out there at the plant. Did you take up any grievances with Redman?

(Testimony of Henry J. Christophersen.)

A. Yes, there was several grievances taken up with Redman.

Trial Examiner Winkler: In what capacity was the witness acting? In view of Mr. Stirling's comment I think that should be in the record.

Mr. Tillman: All right.

Q. (By Mr. Tillman): Did you take up, would you indicate what grievances you took up as a member of the grievance committee, or the standing committee?

A. I didn't quite understand.

Q. What grievances you took up with Redman while you were a member of the standing committee.

A. Well, one of the first that I remember very clearly was one of the boys had quit in April. It was after the first of April, not very long, and he had some vacation pay coming, and when he quit he was not given any vacation.

Mr. Stirling: Excuse me a minute, but could I ask that when the months are mentioned that the years are mentioned, too, [192] so that we know what April he is talking about.

Q. (By Mr. Tillman): All right, you have been asked to indicate what year this grievance on a vacation took place.

A. This particular grievance, I believe, was in the spring. I know it was in the spring, shortly after April 1, 1948.

Q. What was the outcome of the grievance with Redman on the vacation?

(Testimony of Henry J. Christophersen.)

A. Well, we explained the situation to Mr. Redman.

Q. In addition to yourself who was "we"?

A. I believe Parker and Max Gassner was on that committee.

Q. All right.

A. As quick as Mr. Redman saw the contract, we read it over, and he says, "Well," he says, "in my opinion, I think you are 100 per cent right and," he said, "we will pay the man his vacation."

Q. Did you have any other grievances in your capacity as a member of the standing committee with Redman?

A. Well, I remember Redman coming out on the job there and discussing the situation of the sugar pine to us.

Q. And when did that occur?

A. That occurred also in the spring of the year.

Q. The same year? A. The same year.

Q. What was this sugar pine incident?

A. Well, we was having a little difficulty about piling it. The [193] biggest thing was the manner in which they brought us the lumber. Prior to that, why, Mr. Anderson had promised us a little over scale for piling it, and about that time, why, we explained to him that in order for us to pile the lumber that we couldn't pile it unless the lengths was brought to us in such manner that we could pile it, and after all, to explain it, the lengths as they were bringing them to us, maybe we would have a couple of carrier loads of one length. Well,

(Testimony of Henry J. Christophersen.)

we couldn't put a load of 10-foot boards in a 16-foot pile and expect the pile to balance because there is nothing to build up the back of the piles, so we asked him that the lumber be sorted in such a manner that we could pile it either at 10 foot pile or a 16 foot pile.

Q. And who did you ask?

A. We asked Mr. Redman.

Q. And who was it that asked——?

A. Mr. Redman had come out to me and had started to discuss the thing with me on the job.

Q. Was anyone else taking part in that conversation? A. Not at the beginning.

Q. All right, what did Redman say then?

A. He wanted to know why we couldn't pile it that way, and I explained to him that just we either had to pile it one way or the other, but we just couldn't start a 16 foot pile and then he would run over and bring us a load of 10 foot, 10 foot [194] lumber, and expect us to continue up with that pile because that wasn't done. We explained to him we would have to put in a shorter foundation and we would have to have the lumber somewheres near where we could pile it.

Q. What position did he take?

A. Well, he finally agreed that that would be the thing to do.

Q. And was that done thereafter?

A. Yes, he sorted the lumber and at that particular time, why, he asked us about this scale and a half that Anderson had got. I told him all I knew

(Testimony of Henry J. Christophersen.)

about it is that that's what Anderson had promised us and that's what we wanted. We agreed to pile it, and I told him we couldn't pile it unless the lumber was brought to us in the manner in which we could pile it regardless of the price.

Q. Were you paid scale and a half by Redman?

A. I believe that as the conversation went on, why, I called Max over and Redman said, "Well, I would rather just make a price with you and not give you any extra scale for piling." We told him that we would gladly do that, but we would have to have the lumber sorted, so he asked us if we would accept $1.25 a thousand. We told him we couldn't accept it just between the two of us but that we would bring it up at the Union and if it was acceptable it would be agreeable so far as we were concerned.

Q. Was that finally resolved then? [195]

A. Yes.

Q. Did you have any other grievances that were brought up with Redman in your capacity as a member of the grievance committee, of the standing committee?

A. Well, I can't just recollect offhand——

Q. All right, did you in your capacity merely as a piler, did you take up anything with Redman?

A. No.

Q. Now, who succeeded Redman as the manager? A. Percy Cook.

Q. As a member of the standing committee did you take up grievances with Cook? A. Yes.

(Testimony of Henry J. Christophersen.)

Q. And what grievances stand out?

A. I believe the first case that we had with Mr. Cook was the case of Bishop.

Q. When did that take place?

A. That took place shortly after Cook took over.

Q. Do you know the time of the year it was?

A. I don't have it. It was in the summer.

Trial Examiner Winkler: Summer of 1948?

The Witness: Or early spring. It was in the summer of 1948.

Trial Examiner Winkler: Summer or early spring of 1948; is that it? [196]

The Witness: Yes.

Q. (By Mr. Tillman): Who participated with you on that particular grievance?

A. Max Gassner. I believe Parker was a member of the committee, but I don't recall whether he was at the meeting or not.

Q. Was Gassner a member of the committee?

A. Max Gassner was, yes.

Q. What was the particular grievance over Bishop then?

A. He had been discharged.

Q. You don't need to go into details of why he was discharged, but you took up his discharge after he was discharged? A. Yes.

Q. And what were the results of your grievance?

A. Mr. Cook reinstated him without loss of seniority or anything.

Q. Did anything further happen with respect to Bishop after that?

(Testimony of Henry J. Christophersen.)

A. I believe before I was discharged at Dant & Russell he had been discharged again, and I handled the case for him.

Q. When was that?

A. 1949, that was in the spring of 1949.

Q. Did anyone else assist you in the handling of that grievance?

A. Yes, there was the standing committee, I believer Red Brown and Otto Bauer, Red Brown, and I don't remember whether it was Doc Saunders or Sid Taylor, right off the reel. [197]

Q. What were the results of the second grievance with Bishop?

A. Mr. Clark, I believe, was manager at that time. He was reinstated.

Q. You have been in the hearing room, have you, all morning and afternoon during the testimony?

A. Yes.

Q. There was testimony about a statement made by Cook to some of the pilers after this Bishop incident. Did you hear, were you present at any time that Cook made any statement?

A. Yes, he made the statement one morning that, but I don't just exactly remember the exact words he used, but it was pertaining to discharging me and Max.

Q. Well, as best you recall, what did he say?

A. As near as I can recall he made the statement that, "If this happens again you two fellows are going down the road."

Q. Now what was he referring to?

(Testimony of Henry J. Christophersen.)

A. He was referring to some lumber the previous day, the day before. We had reported for work. After we had our machines running and everything, why, nobody seemed to know where the lumber was to be piled.

Q. When you say "nobody" do you mean management?

A. I mean of the management, yes.

Q. Where was it that Cook made the statement, or what day was it, was it the same day?

A. It was the next morning. [198]

Q. I see.

Trial Examiner Winkler: What was he referring to when he spoke, "If this happens again"?

The Witness: Well, the day before that, I think, after a couple of hours of trying to find out where we was to pile the lumber, why, we all went home.

Trial Examiner Winkler: And he said, "If this happens again you will go down the road?"

The Witness: Yes.

Trial Examiner Winkler: Now when he said, "You will go down the road," was he referring to you and Max specifically or to all the men involved? Did he point to you?

The Witness: No, he did not point. I took it to mean that he meant Max and I because as the conversation had been between Max and I and Cook.

Q. (By Mr. Tillman): Did you have any occasion to take up any grievances for the pilers not in your capacity as a member of the standing committee, with Cook? A. No, I did not.

(Testimony of Henry J. Christophersen.)

Q. Then manager Cook was succeeded by manager Clark; is that right? A. Yes.

Q. Did you participate in any grievances other than the second grievance with Bishop, with Clark, as a member of the standing committee? [199]

A. Yes, there was a grievance matter by the pilers in regard to some 8-quarter that was being delivered at the plant which Mr. Clark had the day laborers transfer on to blocks.

Q. Was that presented as a formal grievance?

A. That was presented as a formal grievance.

Q. When did that take place?

A. That took place in the spring of 1949.

Q. Who took part in presenting the grievance?

A. Red Brown and myself, and it seems to me like the third member was Sid Taylor.

Q. What was the grievance of the pilers on that occasion?

A. The pilers previously to that had asked for an adjustment on the piling, unit piling. From the time they changed from square piling to unit piling there had never been a wage adjustment made for the unit piling, and we had asked for that, and we had made an adjustment on that with the agreement, to my understanding—I wasn't a member of the standing committee but I was called in by the committee and the Company at the meeting, and to my understanding the price included all the green lumber that was delivered at the plant.

Q. The Company proposed a rate, did they?

A. Yes.

(Testimony of Henry J. Christophersen.)

Q. And it involved piling all the green lumber regardless of the type of lumber?

A. Yes. [200]

Q. Was that acceptable to the pilers?

A. The pilers accepted that.

Q. Then what was this grievance over?

A. Well, the 8-quarter that had been coming in all, as I say, we took it that all the green lumber that came in was to be handled, that was to be handled, would be given the pilers.

Q. And was it?

A. No, Mr. Clark put day labor on the 8-quarter.

Q. Was that the grievance then? A. Yes.

Q. How did that, how was that grievance resolved?

A. Well, on the meeting Mr. Clark said that in presenting the case, he said well he had five days to call in Mr. Meinke and a government conciliator, which, according to the contract and stipulation in the contract, he did have that right, and that really ended the meeting. He agreed that he would have Mr. Meinke and the conciliator in, contact them, and would have them in there in a week.

Q. Did you know who Mr. Meinke was?

A. I had met the gentleman.

Q. Who was he?

A. He was, as I understand, an attorney for Dant & Russell Company.

Q. What developed after that?

A. Well, he informed us a couple weeks later

(Testimony of Henry J. Christophersen.)

that Mr. Meinke was [201] sick and would be in just as soon as he could make it.

Q. How was the grievance finally resolved then?

A. It kept lingering on and we finally dropped the issue completely.

Q. I want to direct your attention now to the, to an incident just before you were discharged when—no, I will withdraw that. Well, let's start with this. Did you take a vacation in 1949 preceding your discharge? A. Yes.

Q. When did you take your vacation, when did you start it?

A. It was started in, I believe, the week of the 4th of July.

Q. And do you remember what day of the week it was?

A. As I recall, it was on a Friday. That particular Friday was the last day of June.

Q. I will show you a calendar here for 1949.

A. We left on our vacation the evening of June 30.

Q. What day of the week is that?

A. Or I will retract that statement. We left on our vacation on the evening of July 1 on Friday, on Friday of July 1.

Q. When you say "we" who else took a vacation?

A. Max Gassner, M. e Gassner, and myself.

Q. How many—they are all pilers; is that right?

A. Yes.

(Testimony of Henry J. Christophersen.)

Q. How many other pilers remained on the job without taking a vacation then? [202]

A. Just the spare crew.

Q. Was there any particular reason why you three pilers took a vacation at that time?

A. Yes, the mill in which they received their source of lumber was going down that night.

Q. Which meant what as far as the pilers were concerned?

A. It meant that there would be practically no lumber as far as the pilers was concerned.

Q. Nothing to pile?

A. Well, there would be just a little coming in from small outfits, but it wasn't very much.

Q. How much vacation were you entitled to at that time? A. One week.

Q. After the end of the week did you report back to work?

A. I reported back to work on the afternoon of the 12th.

Q. At that time was the sawmill still down?

A. Yes.

Q. How long did it continue down?

A. It continued down until the morning of the 18th or the night of the 17th. I don't know just when they did start. It was either the evening of the 17th or the morning of the 18th.

Q. Did all the pilers report back on the 12th as you did?

A. No, Mike had taken two weeks vacation, one

(Testimony of Henry J. Christophersen.)

week with pay, one week without, and he had no intention to return until the 18th. [203]

Q. I see. Was anyone with you on this occasion?

A. No, I came alone.

Q. What did you do at the plant?

A. I picked up my check. I happened to have a flat tire on my car which I was fixing in the shop. I had taken the tire off and patched it, put it back on the rim.

Q. Did you do anything else at the plant there

A. No, I didn't. I met Parker. I asked him if there was anything for us to do. I told him——

Q. Where did you meet Parker?

A. In the shop.

Q. Anyone else there?

A. I believe Mr. Gannon was there.

Q. O.K., what did you tell Parker?

A. I asked Parker if there was anything doing and he said no there wasn't a heck of a lot. I said, "Well, I thought may be you might have a few days work. It beats laying around." He at that time said, "Well, we have three square piles that you fellows could come down and load out if you want to."

Q. And what was your reply, if any?

A. I told him why, sure.

Q. Did he specify when you had to have it loaded out? A. No.

Q. What was your understanding of the conversation?

A. Well, that was—my understanding was that

(Testimony of Henry J. Christophersen.)

we would come [204] down and work those three days because the mill wouldn't start until the following Monday. We knew that for sure, and it was my understanding we were to come down and work the balance of the week.

Q. Did you report for work then?

A. Yes, we reported Monday morning, or Wednesday morning I should have said.

Q. Who did you have as a team mate?

A. That evening I drove over and asked Max if he would care to come down and work those three days. I says, "I am broke, and I can use that extra money." And he finally conceded that he would come down.

Q. And you both reported on Wednesday then?

A. Yes.

Q. What hour did you report?

A. Seven o'clock.

Q. During the three days then, July 13, 14th and 15th, how much lumber do you estimate that you loaded from those three squares, I mean, as a team?

A. Why, I would estimate a little over 50,000.

Q. And during the three days did you do any other sort of work?

A. We piled a little lumber that was there.

Q. And when you piled lumber how were you paid?

A. We was paid on the regular gyppo rate.

Q. Did anyone else pile when you were piling?

A. A spare crew.

(Testimony of Henry J. Christophersen.)

Q. So they had two crews piling during these three days when there was some piling to do?

A. Yes.

Q. You have already testified earlier today that the squares contained miscuts and so on. Would you describe the appearance of the squares that you unloaded other than the fact that they contained miscuts, in what shape they were and so on?

A. Well, I don't just quite get the meaning there. These square piles were similar to any other square piles.

Q. Well, was the condition of the lumber, other than the fact that it was miscut, suitable for piling or loading out?

A. Yes, yes. I take it that you are asking me was there good in the lumber?

Q. No, my question was, was there anything, was there anything about those squares that made piling difficult aside from the fact that they contained miscuts, that made loading out difficult?

A. No, not other than miscuts.

Q. What was the condition of the weather during those three days, as far as you remember?

A. As I recall it, the temperature was in the neighborhood of a hundred degrees.

Q. On all three days? A. Yes. [206]

Q. During the three days that you and Max were loading out the lumber did you receive any criticism or comment on your work?

A. None whatsoever.

Q. From any management official?

(Testimony of Henry J. Christophersen.)

A. No.

Q. Do you, or have you customarily worked with Max Gassner in the past? A. No.

Q. Had you ever worked with him before?

A. Only in case of emergency where someone would be sick or something like that.

Q. Then for how long a period would that be?

A. Oh, that wouldn't be maybe over one day or I don't even recall working with him over a day or so at a time.

Q. Did you have any warning of any sort that the Company regarded you as loafing on the job?

A. No.

Q. Now, in contract piling the rate is a base rate. Can you give us some idea how much per hour the contract piling team averaged at Dant & Russell while you were there? Maybe we can break it down if you could give us how much the team made for the whole day on an average.

A. Why, I take it what you mean is how much did we make on the average?

Q. Yes, in other words, what was your average take home pay? [207]

A. Our average, well, our average pay was about $3.00 an hour.

Q. And the base rate you managed to make about $3.00 an hour per man?

A. Yes, per man.

Q. When you went on a vacation how did they pay you for your week's vacation?

A. They paid us for an average for three months.

(Testimony of Henry J. Christophersen.)

Q. What did that amount to?

A. $3.00 an hour.

Q. You got $3.00 an hour vacation pay?

A. Yes.

Q. How did that compare with the vacation pay of the day laborer?

A. Well, to my understanding, it would be about twice as much as a day laborer.

Q. In order to earn that $3.00 an hour how hard was it necessary that a team of contract pilers work?

A. Well, in order to make your average of $3.00 an hour I would say that the pilers was giving it their best.

Q. In the past you had worked on day labor loading out in the winter you mentioned, for instance. Did you work as hard loading out as you did when you were contract piling?

A. No.

Q. In your estimation what would be a normal output for a man on day labor loading out? [208]

A. Well, I would say that any crew loading 20,000 per day could be considered an exceptionally good day crew.

Q. In order for you to make your $3.00 an hour on your contract piling basis how many thousand feet did the team have to pile?

Trial Examiner Winkler: May I have the question again?

(Pending question read by the reporter.)

(Testimony of Henry J. Christophersen.)

The Witness: Well, right at the present time I have never really figured it up, but I would roughly estimate that at the particular time we was averaging around twenty-two or thirty-six per man.

Q. (By Mr. Tillman): There was some testimony by Mr. Parker that there was a practice among some of the pilers to report to work a little late and leave a little early. As far as you observed that practice, how did it prevail on the reporting late?

A. Well, our team might vary a few minutes arriving at work. We were never actually too particular whether we was a few minutes earlier or a few minutes later because our pay never started until we went to work.

Q. Were you ever called down by the management for reporting late? A. No.

Q. What was the practice on leaving somewhat early?

A. Well, as a rule, when we had the lumber cleaned up we went home. [209]

Q. When lumber was cleaned up. Does that mean there was no other lumber available to pile, for piling? A. Yes.

Q. Would that vary then with the circumstances; some days you would leave earlier than others? A. Yes.

Q. Was that true of all the teams that were regular crews? A. Yes.

Q. If a load of lumber or if a unit of lumber is piled poorly, do you think it is possible to determine which member of the team is responsible

(Testimony of Henry J. Christophersen.)

if only one member is responsible for the poor piling?

A. Not if, not after the load is moved.

Q. Not after the load is moved, and what would be the only way that you could tell who was responsible for poor piling?

A. Before the load would be moved.

Q. Would that involve someone being there observing the piling? A. Yes.

Q. When Parker was foreman was it his custom to come around and observe how each team was piling?

A. Well, he used to come around and talk.

Q. Did he make any practice of examining the loads to check them for poor piling?

A. If he did he never mentioned it to me.

Q. On the Monday that you reported back to work and were [210] discharged what were you expecting to do that day had you not been discharged?

A. Well, we would probably have gone back home as there wasn't any lumber in, and we would have probably returned home.

Q. In other words, you had no expectation of any more day labor at that time? A. No.

Trial Examiner Winkler: Let's go off the record.

(Discussion off the record.)

Trial Examiner Winkler: Back on the record.

Q. (By Mr. Tillman): At some time or other did one of the pilers get injured out there before

(Testimony of Henry J. Christophersen.)

you were discharged? A. Yes.

Q. Who was that?

A. That was Slim Erickson.

Q. Do you remember about when he was injured?

A. That was possibly three weeks before we went on vacation.

Q. Did that keep him from working?

A. Yes.

Q. And at that time whose partner was Erickson? A. Max Gassner.

Q. After Erickson was injured did Max have a partner? A. No.

Q. What did Max do then?

A. Well, he worked along, he would change off with the spare [211] crew. One of them would work with him awhile, and then the other one would work with him awhile.

Q. What would the other man of the spare crew be doing?

A. Well, he would carry stickers to the rest of the pilers.

Q. What would Max be doing when he was not matched up with one of the spare crew?

A. Well, after a few days of that, why, he stayed piling continuously.

Trial Examiner Winkler: Now you mentioned that it interfered with your work as a result.

The Witness: Yes.

Trial Examiner Winkler: How did that interfere with your work?

(Testimony of Henry J. Christophersen.)

The Witness: Well, it didn't interfere with our work directly, but it interferes with our pay an awful lot.

Q. (By Mr. Tillman): I was going to go into that. Now at that time what sort of pay arrangement were the teams on?

A. At that particular time we was pooling.

Q. By pooling what do you mean?

A. All the lumber was piled. After it was piled it was split equally amongst all the teams.

Q. In other words, the Company kept a tally of all the lumber piled by all the crews, and there was a lump sum which is split up among yourselves?

A. Yes. [212]

Q. And did that include the spare team?

A. When they worked that included the spare team.

Q. So when Max had no partner the remaining teams, in effect, were splitting with Max who wasn't really contributing his full share; is that right?

A. Max was more than contributing his full share.

Q. Well, one of them wasn't.

A. There had to be one of the members which was not piling which naturally at the time, if he was not piling, would not be contributing his full amount.

Trial Examiner Winkler: Just a minute, what is the relevancy of this?

Mr. Tillman: It ended up in another grievance.

(Testimony of Henry J. Christophersen.)

Q. (By Mr. Tillman): Did you take that question up with management, or was it brought to the attention of management?

A. Well, after a few days of that we asked Mr. Clark why Max couldn't have a partner.

Trial Examiner Winkler: Who asked him?

The Witness: I went in with Max and Max asked Mr. Clark if he could have a partner.

Trial Examiner Winkler: Were you there as a committeeman?

The Witness: Well, indirectly, yes.

Trial Examiner Winkler: I mean, was this regular Union business or were you there as a sort of a general spokesman for the pilers at the time?

The Witness: Well, it wasn't—there had never entered any formal complaint to the Union.

Trial Examiner Winkler: That's what I was getting at.

Q. (By Mr. Tillman): All right, what was said to Clark?

A. Well, we asked him about a partner. Max asked him if he could pick his own partner. Mr. Clark said that after all he could pick one of the men working there according to the contract. We asked him if he had any objections if Wiklund came out and piled, and he said, "Why, no." So we went up and asked Mr. Wiklund if he cared to come out and pile. He said he would like to for a while. At that time he was loading cars. Mr. Bloom, his foreman, at that particular time asked if we couldn't wait until noon and then he could come out in the

(Testimony of Henry J. Christophersen.)

afternoon and go to work, which we agreed would be perfectly all right, but Wiklund never showed up so in a day or two I went up and asked Mr. Wiklund why he didn't come out and pile. He said Mr. Clark had talked him out of it.

Q. Did you bring up the subject, or did the subject come up again with Mr. Clark before you went on your vacation?

A. Yes, when we left on our vacation, why, Mr. Clark came out, and Max asked him if he was going to have a partner when we returned from vacation, and I don't remember Mr. Clark's direct answer to that, but I do remember I spoke up and said I was getting mighty tired of carrying a fifth man, and I figured if they was going to continue to do so that he should pay him. [214]

Q. Who should pay him? A. Mr. Clark.

Q. Was there any other conversation there?

A. No, he got a little bit mad and changed the subject immediately, and we went on, started off on our vacation. [215]

* * * * *

Trial Examiner Winkler: Before we put the witness on the stand has there been any stipulation arrived at by the parties regarding the contract that was in effect in July, 1949, between the parties?

Mr. Tillman: I think Mr. Babcock can state a stipulation.

Trial Examiner Winkler: Will you do so, Mr. Babcock?

Mr. Babcock: Yes, I will ask the Reporter to mark

this agreement which is entitled "Working Agreement between Dant & Russell, Ltd., and Local Union No. 6-7, IWA, CIO, Ben, Oregon" as Union's Exhibit 1.

(Whereupon, the document referred to was marked Union's Exhibit No. 1 for identification.)

Mr. Babcock: In connection with this exhibit I propose a stipulation that this is a true copy of a collective bargaining agreement between the Company and the Union entered into on or about the 12th day of May, 1948, executed as indicated, and that [218] this agreement was in effect in July, 1949, at the material times involved herein, it having been renewed for another year with the one modification with respect to a night shift differential, the balance of the contract remaining the same.

Trial Examiner Winkler: Is that stipulation agreeable to the Company?

Mr. Stirling: Yes, it is.

Trial Examiner Winkler: General Counsel?

Mr. Tillman: The stipulation is agreeable and I will so stipulate. However, at this time I do want to announce that I object to the offering of the document on the ground that it is immaterial to the resolution of any issue in this proceeding.

Trial Examiner Winkler: The Exhibit, Union's Exhibit 1, will be received in evidence, and the objection of General Counsel is overruled.

(Whereupon, the document previously identified as Union's Exhibit No. 1 was received in evidence.)

UNION'S EXHIBIT NO. 1

Working Agreement Between Dant & Russell, Ltd.
and
Local Union No. 6-7 I.W.A.-C.I.O., Bend, Oregon

Article I—Recognition

The employer agrees to recognize and deal with the Union as the sole collective bargaining agency for all the employees, excluding foremen, office help, and clerical employees, in its operation located at Redmond, Oregon.

* * * * *

Article VI—Committees and Grievances

The Company shall appoint from among its officers, superintendents, or employees, a management committee of three, which committee shall be known as Employer's Committee and which committee shall represent the Company and be available to meet with the Union Committee upon request. The Company shall have the privilege of changing the personnel of such committee, of its own choosing, at any time upon notice to the Union.

The Union shall elect a Union committee consisting of not less than three members, which committee shall represent the Union in dealing with the Company committee. The Union committee shall be available to meet with the Company committee at all times upon request. The Union standing committee will carry on all negotiations with the employer not otherwise provided for in this contract, and will negotiate and bargain with the Company for any matter not covered by this contract or any amendment hereto as hereinafter provided. The business agent or repre-

Union Exhibit No. 1—(Continued)

sentative of the Union shall have access to the operation at all times during working hours.

No strike shall be called or sanctioned by the Union, or any of its members, and no lockouts shall be called or enforced by the employer until all provisions of this contract have been carried out and a sincere and honest effort to conciliate differences shall have been made.

Article VII—Suspension or Discharge

In the event that any employee shall be suspended or discharged, if such employee believes that he has been unjustly dealth with and requests the Union to represent him, the matter shall be taken up by the Union standing committee with the management committee. If it be determined that the employee has been unjustly suspended or discharged, or that the action taken was not merited in all of its terms, the Company agrees to reinstate or reemploy such employee under such circumstances as may be agreed upon. Any suspension or discharge not called to the attention of the Company by the Union within seven days from the date thereof shall be considered as waived, and thereafter shall not be made the basis of a complaint or grievance.

There shall be no discrimination against any of the employees because of any lawful activity on behalf of the Union.

In Witness Whereof the parties hereto have executed this agreement by and through their authorized

Union Exhibit No. 1—(Continued)

agents and representatives on this, the 12th day of May, A. D. 1948.

INTERNATIONAL
WOODWORKERS OF AMERICA,
LOCAL 6-7, CIO,
By MAX GASSNER,
H. J. CHRISTOPHERSEN,
FLOYD L. PARKER.
DANT & RUSSELL, LTD.,
By ROBERT E. DANT,
Managing Partner.

HENRY J. CHRISTOPHERSEN
(Recalled)

Examination by Mr. Babcock:

Q. Mr. Christophersen, I would like to direct your attention to the strike which the Union conducted against Dant & Russell back in 1948, and then ask if you can state approximately when that strike ended?

A. The strike ended in the month of December, 1948. [219]

Q. Now following that strike did any representative of the management of Dant & Russell criticize you or your team for sloppy piling? That's subsequent to the strike? A. No.

Trial Examiner Winkler: Who is on your—who was your team partner?

The Witness: Mike Gassner.

Q. (By Mr. Babcock): Were you or your team

(Testimony of Henry J. Christophersen.)

singled out after that strike for criticism in the manner in which you had placed stickers in piles?

A. No.

Q. Were you or your team criticized in any manner subsequent to that strike by management for having caused stained or blued lumber. A. No.

Q. Individually, during the strike would you state whether or not there was any lumber that remained unpiled as a result of the strike?

A. Yes, there was.

Q. Following the strike did you return to the job of contract piling? A. Yes.

Q. Was there any stained lumber when you returned to piling?

A. There was a little. It was not all stained. As I recall it, we was surprised that there was only a few loads that was started [220] to stain.

Q. How long did the strike carry on?

A. Approximately seven weeks.

Trial Examiner Winkler: Let's see, this strike began in November?

The Witness: The last of October.

Trial Examiner Winkler: The last of October?

The Witness: Yes.

Trial Examiner Winkler: Through mid-December, 1948?

The Witness: Yes.

Q. (By Mr. Babcock): Now at the time that you were working on July 13th, 14th and 15th just prior to your discharge when you first went out to dry

(Testimony of Henry J. Christophersen.)

load lumber how many squares were standing to be dry loaded by you and Max?

A. I believe there was just a little over two and a half piles.

Q. Now, were you present in the hearing room when Mr. Parker testified? A. Yes.

Q. You may recall Mr. Parker testified that he piled with you for one month; do you recall that?

A. Yes, he piled with me, well, somewheres, I don't, couldn't recall, I couldn't exactly say. In the neighborhood approximately of a month.

Q. At the time that Mr. Parker was piling with you how experienced a piler was he? [221]

A. Well, he was an inexperienced piler.

Q. And by "inexperienced" you mean what?

A. He had never had any experience to speak of.

Q. When a team is unit piling is it possible for one end of the unit pile to be sloppy and not the other end? A. No.

Q. Why is that?

A. Well, the boards are—if one end of the unit is straight the other end must be because the lumber is more or less straight. It has to be.

Q. Any by the same token, is it true that if one end were out of line so would the other end be out of line? A. Yes.

Mr. Babcock: That's all.

Trial Examiner Winkler: I have one question. Do the piles always contain the same number of board feet, Mr. Christophersen?

The Witness: No.

Trial Examiner Winkler: One other thing to

(Testimony of Henry J. Christophersen.)

clear up the record on a point. When did you come to work for the Company?

The Witness: In May of 1947.

Trial Examiner Winkler: That's all I have.

Q. (By Mr. Babcock): Hank, as a member of the standing committee did you have anything to do with contract negotiations as well as grievances?[222]

A. Yes.

Q. Referring you to Union's Exhibit 1, this booklet agreement which purports to contain your name as one of the signatories to that contract, did you sign the original contract? A. Yes.

Q. As a member of the Union standing committee? A. Yes.

Q. Did you participate in the negotiation of that contract? A. Yes.

Q. Now the other signatures on here for the Union are Max Gassner and Floyd Parker. Were they the other two members of the standing committee at that time? A. Yes.

Q. Did they both sign the original contract?

A. Yes.

Q. Who was the chairman of the committee, or did you have a chairman?

A. I don't remember which one was chairman. I believe Floyd Parker was chairman of the Union at that time.

Q. Would that automatically make him chairman of the committee or not?

A. Well, it would not necessarily automatically make him that, no, but I don't remember exactly of any of us acting as chairman.

(Testimony of Henry J. Christophersen.)

Q. I see. A. On the committee. [223]

Q. Now, did Parker during his term as—strike that—is the chairman of the sub-local automatically a member of the standing committee?

A. They have always had it so, that is, he is not elected. He has the right to serve as a member.

Q. Well, at this time, at the execution of this contract was the chairman of the sub-local, in other words, was he a member of the committee by virtue of his position as chairman of the sub-local, or had he been separately elected?

A. I don't remember. That is so close to the election of officers that it could very possibly be that he was elected chairman after that.

Q. I see. Well, did he participate in all the meetings on the grievances when he was on the committee?

A. No.

Q. What part did he play when he was on the committee?

A. Well, he was more or less just a member of it.

Q. Who did the speaking for the committee for the most part?

A. Well, I always did quite a lot of talking.

Q. How about Max? A. Max did also.

Q. Now concerning this strike in 1948, what was the issue, to make the record complete, what was the issue that led to that strike?

A. The issue of the strike was partially veterans returning having [224] five years seniority to receive two weeks vacation. Then the pilers entered into it in this particular manner, that they wanted their

(Testimony of Henry J. Christophersen.)

prices adjusted that should be done from a square piling to the unit piling. There had never been any negotiation on that, and we were dissatisfied.

Q. But the issue of the veterans' strike was a question of veterans' vacation pay? A. Yes.

Q. And the piling question was discussed, was it, during the course of the strike? A. Yes.

Q. Did you participate in any of the negotiations or discussion during the course of the strike between the Company and the Union? A. No.

Q. I believe that you testified that after the strike at some point there was a meeting between management and the Union at which the rate for unit piling was discussed? A. Yes.

Q. Were you present at that meeting?

A. We were called in to that meeting.

Q. What do you mean by "we"?

A. The pilers.

Q. And did you have anything to say at that meeting. A. Yes. [225]

Trial Examiner Winkler: When was this meeting, please?

The Witness: This meeting was held in the spring of 1949.

Q. (By Mr. Babcock): Was that the meeting in which the rate of 97 cents was agreed upon?

A. Yes.

Q. Do you recall of any statement made during the course of that meeting with respect to the reinstatement of pilers after the strike?

A. Yes.

(Testimony of Henry J. Christophersen.)

Q. Who made that statement?

A. Mr. Meinke.

Q. Who was Mr. Meinke?

A. He was attorney for Dant & Russell as I understand it.

Trial Examiner Winkler: How do you spell that now?

Mr. Babcock: M-e-i-n-k-e.

Mr. Stirling: Excuse me a minute. If he is going to ask for—which he seems to be leading up to—a statement that Mr. Meinke made, of course, I would object to it as hearsay. Mr. Meinke is dead now and so could not be present to rebutt.

Mr. Babcock: Well, it's hearsay, of course, but it's a statement made by a person representing the Company, and it is certainly admissible.

Mr. Stirling: Well, it's not admissible in a court of law, certainly. [226]

Mr. Babcock: Certainly an admission against interest is always admissible whether hearsay or not.

Trial Examiner Winkler: Before I rule on that I would like to ask the witness a question. Who else was present at this meeting besides Mr. Meinke and you, sir?

The Witness: Oh, Mike Gassner, Erickson, Slim Erickson, through the standing committee. I remember——

Trial Examiner Winkler: Was anyone else from the Company there?

The Witness: Mr. Clark was there.

Trial Examiner Winkler: Mr. Clark was there?

(Testimony of Henry J. Christophersen.)

The Witness: Yes.

Trial Examiner Winkler: I will overrule the objection. Continue, sir.

Q. (By Mr. Babcock): Now, what led up to this statement being made and what were the circumstances?

A. Well, in the course of the conversation with the management Mr. Meinke took it up that if there had never been an adjustment made that the Company was in error and we were right, and the adjustment should be made.

Trial Examiner Winkler: Are you talking about the adjustment of the wage scale from—as a result of the change from square piling to unit piling?

The Witness: Yes.

Trial Examiner Winkler: Is that correct? [227]

The Witness: Yes. In the course of that he admitted that if the adjustment had not been made that there should be—we were right, and there should be an adjustment made, and in that conversation he mentioned or referred back to the strike as he remembered it. As near as I can quote him, he says, "As I recall it, Mr. Dant didn't want to take some of the pilers back."

Q. (By Mr. Babcock): Now in your experience as a member of the standing committee from what group or crew did most of the grievances arise while you were on the committee?

A. Why I wouldn't say that grievances arise from any particular crew. We handled all the grievances for the entire plant.

(Testimony of Henry J. Christophersen.)

Q. I understand, but I am asking what, for what crew did most of the disputes arise, with respect to what crew?

A. Well, I wouldn't, I couldn't involve any particular crew because I don't think that it would be.

Q. Well, you have testified here as to certain grievances that you participated in. As I recall it, all of them except the Bishop case arose concerning the piling crew; is that correct?

A. Yes, during the course of this meeting most of the grievances that has been brought out has been over the pilers.

Q. Now with respect to the dispute concerning which you testified, or let's not say dispute, but incident in which the pilers went home because they couldn't find out where to pile. A. Yes.

Q. Would you fix the date of that? [228]

A. That would be almost impossible for me to fix that date.

Q. Well, was it after you again became a member of the standing committee?

A. I believe at the particular time I was a member of the standing committee. I am not positive as to that because I—I don't just recall what day it was. I believe Mr. Cook was the manager.

Q. And that would have made it when, 1949?

A. No, that would make it 1948.

Q. 1948, and the approximate date of the dispute concerning the handling of the 8-quarter lumber, do you remember that incident?

A. That was in the spring of 1949.

(Testimony of Henry J. Christophersen.)

Q. Spring of 1949. About how long was it before the time that you took your vacation?

A. Oh, possibly six weeks or so, possibly two months.

Q. Now you testified with respect to day work that you did in the winter of 1948 and 1949; do you recall that? A. Yes.

Q. Can you tell us the circumstances under which you did that work, how you happened to do that work?

A Well, it was in the winter months, and there wasn't any green lumber coming in, and we worked by the day loading that lumber.

Q. Well now, who assigned you to that work? How did you happen to go on to that?

A. The first time, in the winter it was Mr. Troutman.

Q. Did you ask to be put on it, or did he ask you to do it or [229] what was the situation?

A. Well, we just went down one day to see what was going on, and he suggested we load some lumber.

Q. Did you understand that you were required to do that or simply given the privilege of doing it?

A. We were just simply given the privilege, as I understood it.

Q. Do you know what the practice is generally in this area with respect to contract men doing day work?

Mr. Stirling: I object to that for this reason, that this man has not been proven to be an expert. He was

(Testimony of Henry J. Christophersen.)

a contract piler for a little over two years at the Dant & Russell plant.

Trial Examiner Winkler: Mr. Christophersen, so far as you know, was there any practice at the Dant & Russell plant with respect to whether or not the contract pilers were required as part of their duty to do day work? Was there such a practice, do you know?

The Witness: They were not required, no.

Trial Examiner Winkler: There was a practice, and that practice was that they were not required; is that your answer?

The Witness: Yes.

Trial Examiner Winkler: Continue. Objection overruled.

Q. (By Mr. Babcock): And at Brooks-Scanlon what was the practice?

A. At Brooks-Scanlon generally there wasn't any contract work to be done, why, the contractors was just generally put out, given odd jobs, day work.[230]

Q. State whether either at Brooks-Scanlon or Dant & Russell, in your experience, there was any production record kept of the amount of work done by the contract men when they were doing this day work to fill in?

A. To my knowledge, there never was.

Q. Do you recall approximately how much lumber you handled doing day work in the winter of 1948-49?

A. Oh, I would say it would run anywheres from 15 to 20 thousand a day.

Q. Per man or per crew? A. Per crew.

(Testimony of Henry J. Christophersen.)

Trial Examiner Winkler: Was that at Dant & Russell?

The Witness: That was at Dant & Russell.

Trial Examiner Winkler: You are talking now about the contract workers when they did day work?

The Witness: Yes, myself.

Q. (By Mr. Babcock): Who were you working with? A. Mike Gassner.

Q. What kind of lumber were you handling at that time?

A. Well, we handled all types of lumber. We had 6-quarter, 12, 4-quarter, whatever lumber they happened to want.

Q. Was that lumber which was piled in the yard in squares? A. Yes.

Q. Were you breaking down the piles?

A. Yes. [231]

Q. Making them into carrier loads?

A. Yes.

Q. Now I wonder if you would tell us in somewhat more detail the kind of lumber that was in these piles that you were working on in July, 1949 at day work just before your discharge?

A. Well, that was miscuts. That was lumber that was not uniform. It was, it could be any type of lumber.

Q. Were those the last piles remaining in the yard, the square piles? A. Yes.

Q. Do you know why they had been left there for the last? A. Well——

Q. If you know, if you don't know say so.

(Testimony of Henry J. Christophersen.)

A. I wouldn't know other than that type of lumber there is—remanufacturing, there would be a lot of day work, and the Company probably wouldn't want to fall back on them until they wanted to either move the piles or use the lumber.

Q. Do you know what was done with that lumber after it was loaded? A. No, I don't.

Q. Was any, did any of that lumber contain bark?

A. Yes.

Q. Will you explain that?

A. Well, that lumber was not exactly—as I say, is was miscut, it was lumber that was not uniform, and it had never been what you call—some of it had not been edged. [232]

Q. Will you explain what you mean by that?

A. Well, generally lumber that's cut uniform, why, they edge it. That is, we will take, for instance, a piece of common. They would rip the bark off before they would send it in.

Q. That is after it has come off the log, from the head rig? A. Yes.

Q. And some of these pieces then have not been edged after they have been cut off the log; is that correct? A. No, they had not.

Trial Examiner Winkler: That is, it still contained the bark before the edging procedure?

Mr. Babcock: Is that right?

The Witness: Yes.

Q. (By Mr. Babcock): How did that lumber compare so far as ease of handling was concerned with the lumber which you had been working on at day work in the winter of 1948-49?

(Testimony of Henry J. Christophersen.)

A. Well, actually, in handling there is——

Q. I am talking about the speed with which you could break it down and load it into piles.

A. Well, normally you couldn't handle, you would handle half as much of that type of lumber than in your straight type of lumber. That is what I mean. You can't handle as much of it as you can uniform cut lumber.

Q. And the reason for that is what?

A. Well, it's cut, it's miscut. You can't develop the lumber [283] by piling it up like you can uniform cut lumber.

Mr. Babcock: That's all I have.

Trial Examiner Winkler: I have some questions.

Q. (By Trial Examiner Winkler): When you gave the figure 15 to 20 thousand board feet per day which, you say, is the normal amount of loading, does that refer to regularly cut lumber or to miscuts?

A. That refers to regularly cut lumber.

Q. And just to fill in my knowledge again, this lumber that's loaded is lumber, the correct word first of all at that time when it's ready to be loaded, do you call it lumber? A. Yes.

Q. Where does that lumber come from?

A. The lumber came from the mills. That is, it was brought in and piled there and piles was taken down because it was dry.

Q. O.K. Now after it is loaded where does it go from there?

(Testimony of Henry J. Christophersen.)

A. As a rule, to the planers.

Q. To the where? A. Planers.

Q. Planers? A. Yes.

Q. In other words, the lumber comes from the mill, and then it goes to the planers; is that it?

A. Yes, if it is dry.

Q Is it at the mill where they take off the bark? [234]

A. It's already been stripped. The lumber is piled, and then after it's dry it's taken back down and from there carried to the remanufacturing.

Q. (By Mr. Babcock): To clarify that one point, when the lumber is brought in from the mill is it dry before it goes to the planer? A. Yes.

Q. And that would be either kiln dried or——?

A. Air dried.

Q. Air dried, and this lumber down in the yard had been air dried; is that correct, by its standing there in the yard? A. Yes.

* * * * *

Cross Examination

Q. (By Mr. Stirling): Mr. Christophersen, do you know what year Dant & Russell had a contract with the Union?

A. All I know is they had a contract in effect when I went to work. [235]

Q. And it was under contract all the time you worked there? A. Yes. [236]

* * * * *

Q. (By Mr. Stirling): Then there was a contract

(Testimony of Henry J. Christophersen.)

in effect at the time of your discharge; is that right?

A. Yes.

Q. With a grievance clause? A. Yes.

Q. And you took your discharge up as a grievance; did you not?

A. As I remember the contract, that any discharge had to be reported——

Q. No, I asked you if you took your discharge up as a grievance? Did you take it up as a grievance?

A. Yes, at——

Q. And what procedure did you follow?

A. Well, we—the regular procedure. We reported to the standing [238] committee.

Q. And then what went on from there?

A. Well, they held their meetings.

Q. And did they hold a meeting on your discharge? A. Yes.

Q. And did they hold a meeting with representatives of the employer on your discharge?

A. You mean with the Company?

Q. Yes. A. Yes.

Q. And what was the disposition of that grievance?

A. Well, about the only thing, they maintained we had not done enough work to suit them.

Q. Were you present at the meeting with the Company? A. I was, the first one.

Trial Examiner Winkler: May I ask——

Q. (By Mr. Stirling): You mean you were at the first one?

(Testimony of Henry J. Christophersen.)

A. The first one. I was still a member of the standing committee.

Q. Do you mean that there was more than one meeting? A. Yes.

Q. With the Company? A. Yes.

Q. Involving this grievance about your discharge?

A. Yes.

Q. Well, wasn't a disposition made of your grievance at one of [239] these meetings?

A. Why, I don't just get what you mean on that.

Q. Well, wasn't it determined at the meeting whether or not your discharge was for good cause or not?

Mr. Tillman: Determined by whom? I think the witness——

Trial Examiner Winkler: Yes, I think I would like to know who was at these meetings, what was said, what was acted upon, and who decided what, and may I also ask parenthetically when we are speaking of the discharge do the same matters also apply to the discharge of Mr. Gassner or do you want to take it up separately?

Mr. Stirling: Well, I guess we'll have to take it up separately, but I think they were taken up at the same time.

Trial Examiner Winkler: Were they, both discharges, taken up at the same time?

The Witness: Yes.

Trial Examiner Winkler: And the same procedures were followed with respect to your discharge and the discharge of Mr. Gassner; is that correct?

(Testimony of Henry J. Christophersen.)

The Witness: Yes.

Trial Examiner Winkler: Please continue, sir.

Q. (By Mr. Stirling): Well then, who was present at the first meeting involving your grievance concerning discharge?

A. Well, for the Union, myself, Red Brown—I was trying to think of the third member. I believe it was Conger, Red Conger, [240] and for the Company all I can remember at the present time was Mr. Parker and Mr. Clark.

Q. And nobody else was present at that meeting?

A. I believe the Business Agent was there, too.

Trial Examiner Winkler: The Union Business Agent?

The Witness: The Union Business Agent.

Q. (By Mr. Stirling): You mean Mr. Fordham?

A. Mr. Fordham.

Q. You are not entirely sure that that is all the people who were there?

A. Well, I am not entirely sure, no.

Trial Examiner Winkler: May we fix the date of this meeting?

Q. (By Mr. Stirling): Yes, may we, approximately?

A. Well, it had to be, it was shortly after the discharge. It was—I don't recall whether it was Monday evening, Tuesday evening, the first part of the week.

Trial Examiner Winkler: It is not the point that we fix the exact date, but can we say it was about a week after the discharge?

The Witness: It was less than a week.

(Testimony of Henry J. Christophersen.)

Trial Examiner Winkler: It was in the week following the discharge then?

The Witness: Yes.

Mr. Tillman: If I may interrupt just one moment for [241] clarity, the witness had said Monday or Tuesday which would place it the same day or very shortly after the discharge.

The Witness: It was shortly after the discharge, not very long.

Q. (By Mr. Stirling): Within a week?

A. Yes.

Q. Were you present at that meeting as a member of the Union committee or as the man who had been discharged?

A. No, I was there as a committeeman.

Q. Then you took part in the entire meeting; is that right? A. Yes.

Q. What was the outcome of that meeting?

A. Well, about all we accomplished at the meeting was the fact that the Company agreed that we loaded at the rate of 20,000 per day.

Q. The Company agreed?

A. Well, the Company representatives agreed. Mr. Parker, according to his figures, had figured that we had loaded approximately 20,000 feet per day.

Q. Well, what was the outcome so far as your grievance was concerned over the discharge?

A. There was, that was all, there wasn't—they refused completely to do anything, that is, re-hire us or put us back on the job or anything else.

Q. Now then, was there another meeting? [242]

(Testimony of Henry J. Christophersen.)

A. Yes.

Q. And about when was it?

A. That was, that followed that, I wouldn't say, it wasn't too long after that, a few days.

Q. And who was present at that meeting?

Mr. Babcock: Just a moment, I object to that. I think the testimony already shows that the witness was not present at that meeting.

Mr. Stirling: You were not present at the second meeting?

A. I wasn't present at the second meeting.

Q. (By Mr. Stirling): Neither as a party nor as a witness?

A. No, I wasn't present.

Q. And from your knowledge you know who attended that meeting, do you not?

A. Well——

Mr. Babcock: I am going to object to this again. I don't see what value it is going to be in the record if we are going to give Mr. Christophersen's hearsay statements. We will have witnesses who were in attendance at that meeting.

Trial Examiner Winkler: Don't you think it would be better to prove it by someone who was there, Mr. Stirling?

Mr. Stirling: Well, of course, we had people there, too, but if that question, if the objection is upheld, then I will follow it with another question that may answer the problem anyhow. [243]

Trial Examiner Winkler: All right, I will sustain the objection.

(Testimony of Henry J. Christophersen.)

Q. (By Mr. Stirling): What do you know of the outcome of that second meeting? What disposition was made of your grievance as a result of that?

A. Well, to my knowledge, all that was done was that the Company stood pat.

Q. Wasn't it determined at that meeting that you were discharged for good cause?

Trial Examiner Winkler: Well, how would this witness know that, Mr. Stirling? He wasn't there.

Mr. Stirling: Can we go off the record?

Trial Examiner Winkler: Let's go off the record.

(Discussion off the record.)

Trial Examiner Winkler: Back on the record.

Mr. Stirling: What was the last question?

(Last question read by the Reporter.)

Mr. Stirling: That's something he should know.

Trial Examiner Winkler: All right, I will permit that question. Do you know what resolution was made of your discharge at that meeting?

The Witness: Well, to my knowledge, the answer would have to be "no".

Trial Examiner Winkler: You don't know?

The Witness: Well, it's obvious if the outcome had been [244] I would have been discharged for good cause we certainly would not have filed charges against the Company.

Trial Examiner Winkler: In this connection, counsel, before counsel proceeds, and I don't care who does it——

Mr. Stirling: That's the end of the whole——

Trial Examiner Winkler: I would like to know

(Testimony of Henry J. Christophersen.)

what happened at these meetings, who said what. I would also like to know of the assumption that the man were not taken back, as he wasn't, would it take a majority of the pilers present to say he wasn't taken back, would it require a majority of the men present at the meeting to put him back to work. I mean, without that knowledge I am in the dark.

Mr. Babcock: May I say as to that and call your attention to Articles VI and VII of the contract which clearly contemplate that the grievance procedure is not an arbitration procedure. It's simply a procedure by which they can try to arrive at an agreement, and in Article VI, page 6, last paragraph, provides that, "No strike shall be called or sanction by the Union or any of its members, and no walkout shall be called or expressed by the employer until all provisions of this contract are carried out and an sincere honest effort to conciliate differences shall have been made." I think it's obvious from reading the contract it did not contemplate a majority vote of the committee. It simply contemplated trying to work out their grievances. Then if they cannot that way, to take economic action. [245]

Trial Examiner Winkler: I was wondering if there were two members of the Union and two members of the Company present, suppose the record were 2 to 2 as to whether this man would be taken back, would he be taken back under those circumstances?

Mr. Babcock: The agreement does not call for anything of that kind at all.

Trial Examiner Winkler: You see, at that point

(Testimony of Henry J. Christophersen.)

I suppose there would be a tally, and I suppose since the man were not taken back he would not be taken back.

Mr. Stirling: I have asked my last question in this particular line of questioning. I have a lot of others, but if you would like to ask him you go right ahead while it's fresh in your mind.

Q. (By Trial Examiner Winkler): Well, regarding this first meeting that you attended, the first grievance meeting with the Company, you say that Mr. Parker and Mr. Clark were there and perhaps some other people were there. Now what did Parker or Clark say at that meeting with respect to why you were discharged; do you remember?

A. Well, as I remember, I don't recall Mr. Clark saying anything.

Q. Did Mr. Parker say—what did Mr. Parker say?

A. Well, he said as far as he was concerned we was fired and was going to stay fired.

Q. Did he say why you were fired at that time?

A. He said we didn't do enough work to suit him [246]

Q. When he said you didn't do enough work to suit him did he refer to any specific period of time, or, in other words, was he referring to the three-day period, or was he referring to a period beyond the three days?

A. I took it he was referring to the three days.

Trial Examiner Winkler: That's all I have on

(Testimony of Henry J. Christophersen.)

that particular point. Now do you want to continue, Mr. Stirling?

Mr. Stirling: All right.

Q. (By Mr. Stirling): What was the day labor rate at Dant & Rnssell at that time; do you recall?

A. We received $1.50 an hour. [247]

* * * * *

Q. Now when you first went to work in May of 1947 you were either elected or appointed to the committee not long after that; is that right?

A. Yes.

Q. Now, were you elected or were you appointed, or just how did you happen to become a member?

A. I was elected to fill a vacanc

Q. Elected by the membership?

A. I was elected by the membership, to fill a vacancy.

Q. At a meeting of the Union?

A. At a meeting of the Union.

Q. Would that be a meeting of the Dant & Russell employees? A. Yes.

Q. Of the pilers or all of the employees?

A. All of the employees.

Q. You were elected to fill an unexpired term? [248] A. Yes.

* * * * *

Q. Now is this standing committee a grievance committee or a negotiation committee?

A. It is both.

Q. I think it was asked before, but I would like to ask again. Do you know now when your new

(Testimony of Henry J. Christophersen.)

officers are elected in your Local?

A. Elected in June, I believe.

Q. You are not certain of that?

A. No, I am not certain.

Q. And when are these committees, when is this standing committee chosen?

A. I believe they are elected, I believe they take office in the first meeting in July.

Q. But you are not sure of that?

A. I am not positive, no.

Q. Is that provided for in your Local's by-laws?

A. Yes.

Q. But you don't know what that provides?

A. Not to be exact, no.

Q. Who were the officers of the Local at the time of your discharge?

Mr. Tillman: Just a moment, I think that should be [250] clarified. The question as it is now phrased is confusing because I think the record shows they have both local officers and sub-local officers for their particular plant.

Q. (By Mr. Stirling): Did you have both local and sub-local officers? A. Yes.

Q. All right, who were the sub-local officers at the time of your discharge, and what is a sub-local?

A. The sub-local is a branch of the main local.

Q. What is the jurisdiction of the sub-local?

A. Well——

Q. What employees does it cover?

A. Dant & Russell.

Q. Who were the officers of the sub-local at the

(Testimony of Henry J. Christophersen.)

time of your discharge?

A. Red Brown was chairman, a young fellow by the name of Freddie. I can't recall his name right now, was secretary. Shorty Banta was warden.

Q. Shorty what?

A. Banta, I think his name, I don't know whether that's correct pronunciation.

Q. Are there any other officers that you can name?

A. No, outside of that it would be just the standing committee.

Q. Who was on the standing committee at that time?

A. Red Brown and myself and Sid Taylor.

Trial Examiner Winkler: Sid who?

The Witness: Sid Taylor.

Q. (By Mr. Stirling): And when had you been elected to that office?

A. That was in the spring of 1949. Incidentally, that's still an unexpired, you know, that's another unexpired term.

Q. You mean you were elected to fill an unexpired term of someone else? A. Yes.

Q. Well, as I understood it, in your direct testimony you said that early in 1949 you were elected to fill the unexpired term of Fred Toomey?

A. Yes.

Q. Is that the one you referred to?

A. That's the one I am speaking of.

Q. Now, you say the officers changed in July,

(Testimony of Henry J. Christophersen.)

1949. Now, were you re-elected again in July, 1949?

A. Yes.

Q. Well now, you just said you filled the unexpired term of Mr. Toomey.

A. Which expired, his term would have expired in July.

Q. Well then, were you re-elected?

A. I was re-elected, yes.

Trial Examiner Winkler: In July, 1949?

The Witness: In July, 1949, yes. Our election is held, [252] starts in May and June, May, and is carried over. After the officers are elected they don't take office until July.

Q. When did that meeting take place at which you were elected to be a member of that committee then? A. In June.

Q. In June of 1949? A. June of 1949.

Q. Did the Company know that you had been re-elected as a member of that committee?

A. That I don't know. I don't know that.

Q. Well now, your sub-local then is just part of the entire Local; is it not? A. Yes.

Q. And the entire Local covers several plants?

A. Yes.

Q. Do you know what those other plants are?

A. I know some of them, Brooks-Scanlon, Shevlin-Hixon, and Dant & Russell, Tite Knot. There is a little molding plant there. I don't recall the exact name of it. I believe it's Ponderosa in Redmond, Hitchcock's in Sisters, Trailways, Oregon Trail Box

(Testimony of Henry J. Christophersen.)

out here, and I am not sure if there is any more or not.

Q. Now since that contract in 1948 which you signed along with Mr. Gassner and Mr. Parker and Mr. Dant all negotiations for contracts or renewal of contracts covering Local 6-7, as far as the sub-local is concerned at Dant & Russell, have been finally [253] consummated between your Union representatives such as Mr. Sullivan and the Company, have they not?

A. Yes, in the presence of the committee.

Q. Always in the presence of the committee?

A. Well, the majority of the time. I know of no meetings other than that.

Trial Examiner Winkler: By "consummated" do you mean the signing of a document or the negotiation of the provisions?

Mr. Stirling: The signing of the document.

Trial Examiner Winkler: The signing of the document.

Q. (By Mr. Stirling): With respect to the 1949 negotiations, did you meet with the employer, with the Company, at any time with respect to the 1949 negotiations?

A. Yes, there was one meeting I remember distinctly.

Q. When was that?

A. That was in the spring of 1949.

Q. And who met at that meeting?

A. Sullivan, Mr. Fordham, and our committee,

(Testimony of Henry J. Christophersen.)
I believe, consisted of Red Brown, Sid Taylor, and myself.

Q. And who of the Company was there?

A. Mr. Clark was there and Meinke, the attorney.

Q. Do you recall about when that was?

A. It could have been in May.

Q. In May?

A. It could have been in May, it could have been the last of April. [254]

* * * * *

Q. (By Mr. Stirling): On one occasion I understand a statement was made or alleged to have been made by Redman directed and alleged to be directed to you and Max Gassner to the effect that if you did that again—this is according to Kramer's testimony—you [256] would be going down the road. Now, to what was he referring when he made that statement?

A. I believe he was referring to a statement made by Mr. Cook on one morning, to my knowledge. I heard that statement.

Q. (By Mr. Stirling): Well, what was the reason for the manager making that statement; do you know?

A. Yes, the day before we, when we reported for work we spent better than two hours down there trying to find out where we ought to pile the lumber, and nobody seemed to know so we went home.

Q. So he was making that statement because

(Testimony of Henry J. Christophersen.)

you had gone home early the day preceding; is that right? A. Yes.

Q. Now then, was another statement attributed to one of the managers at the kiln, or am I wrong? Was there only one statement?

A. Mr. Redman made a statement at the kiln.

Q. To a similar effect?

A. To a similar effect.

Q. Now what was, why did he make that statement? What had you done that caused him to make that statement, that alleged statement?

A. Well, I had not done anything wrong. The fact was that he was getting so much lumber piled up he was beginning to get nervous, and he was out there. Well, on this particular morning I believe the statement, as I recall it, he had been out there half the morning, and a man can't pile lumber and talk to the [257] manager too, and I think, perhaps, maybe he got a little aggravated because he came back, and he says, well, I remember that he came back, he says, "Well, what would you suggest?" "As long as you have got so much lumber," I says, "let's get it piled up and start all over again," and he says, "Well, I can get all the pilers I want," he says, "we got lots of them." I says, "Well, let's pile this lumber up." The next morning he had a lot of men out there, but most of them didn't finish the day.

Q. You mean they left early?

A. They—no, they played out.

Q. Oh, I don't think you answered my question,

(Testimony of Henry J. Christophersen.)

Mr. Christophersen. One of the managers is reported to have made a statement at the kiln similar to this first statement that we talked about. Now, was there any statement to the effect that they would be better off without you, or something along those lines, because of something you had done? Now do you recall that?

A. Yes, sure, there was a statement made to that.

Q. Now why had the manager made that statement?

Trial Examiner Winkler: Who was manager, first?

The Witness: Redman, Mr. Redman was manager.

Trial Examiner Winkler: Would you please answer Mr. Stirling's question now?

The Witness: He made that statement around the kiln. We was working, as I remember.

Q. (By Mr. Stirling): Yes, but why did he?

A. Yes, he made it because was getting a lot of lumber on hand, and he didn't know what to do. He was blaming us for the lumber accumulating when, actually, it was not our fault.

Q. In other words, he was complaining, in other words, that the lumber was not being piled fast enough; is that right?

A. Yes, that's what his complaint was.

Trial Examiner Winkler: When you say blaming you whom do you mean by "you"?

The Witness: Well, he was blaming the pilers,

(Testimony of Henry J. Christophersen.)

actually. I didn't mean individually to me, he wasn't——

Trial Examiner Winkler: What did Redman say on this occasion?

The Witness: Well, he was out there, he says, "Gosh, it looks to me like we are getting an awful lot of lumber of hand here," he says, "I would like to get this piled up." I says, "Yes, I know. All you have to do is to make up your mind what you are going to do with it and put the lumber there, and we will get it piled." He says, "Well, I suppose you want to work Saturday," and I says, "Well, not necessarily," I says, "let's just get this lumber where it belongs, and we will clean it up and start anew," and he says, "Well, heck, I can get lots of pilers." Well, I says, "By the looks of it you are going to have to have a few." I says, "Why don't you put on a few until we get this cleaned up." And the next morning he had asked a lot of boys if they wanted to pile, and they were all anxious to pile, and they [259] were all—I think he told me he had 18 crews to start out that morning. That evening he came back. He says, "Well," he says, "I guess I don't know as much as I thought I did because," he says, "they have all played out on me." I says, "Well, just get the lumber out there, and we will get it piled up."

Q. Now then, these statements then that are attributed to Cook and Redman were made because of something that you had done or failed to do, or

(Testimony of Henry J. Christophersen.)

something that he thought that you had done or failed to do; isn't that right?

Mr. Babcock: I object to that as argumentative.

Trial Examiner Winkler: May I take over at this point, Mr. Stirling? Just one second to clarify my own mind on that. You refer now to statements of Cook and Redman about something to the effect that they would get rid of Max and Hank; is that the statements you have in mind?

Mr. Stirling: Those were the alleged statements.

Trial Examiner Winkler: Now has Mr. Christophersen identified Mr. Cook and Mr. Redman as making those statements? I mean, the other witnesses have identified them. That's why I asked the last questions about the piling, but he made no statements about this——

Mr. Stirling: Well, the statements were made, well, I guess they were brought in by two other witnesses. I am not certain.

The Witness: Mr. Kramer and Pivinski. [260]

* * * * *

Trial Examiner Winkler: Mr. Christophersen, were you ever present when Mr. Redman or Mr. Cook said something to the effect that the Company would be better off without you and Gassner being present, or the Company would have to get rid of you?

The Witness: Mr. Cook made the statements.

Trial Examiner Winkler: Now would you tell me the circumstances under which the statement was made?

(Testimony of Henry J. Christophersen.)

Mr. Tillman: Before the witness answers, Mr. Examiner, I wonder if the record is clear on the first witness' answer which shows that he heard Cook make such a statement but that he did not hear Redman; is that your answer?

Trial Examiner Winkler: As far as I am concerned, I mean the record is confused on this point. I don't know whether this man was present. I don't know if the statements were actually made. We have testimony they were made. Now if this man was actually supposed to have been present, that might have some effect as to whether it was made or not made.

Mr. Babcock: Mr. Examiner, may I say this? His testimony [262] already shows he was present at the time of the Cook statement, and he has already testified, he has already given testimony as to that, but the testimony is confused as to the Redman statement.

Trial Examiner Winkler: All right, tell us, please tell me again, what did Mr. Cook say?

Mr. Stirling: If you know.

The Witness: We came to work on this particular morning. That was the morning after we had gone home early. That is after the Company didn't know where they wanted to pile the lumber. The next morning when we came to work I talked to Cook. He was mad. He says, "If this ever happens again," he says, "I am going to send you and Max down the road."

Trial Examiner Winkler: Mr. Stirling, will you please take over?

Q. (By Mr. Stirling): And he was referring to you leaving early the previous afternoon?

(Testimony of Henry J. Christophersen.)

A. The previous morning.

Q. The previous morning. Now have you been present at meetings at which Mr. Dant was present?

A. Yes.

Q. And hasn't he voiced dissatisfaction with your work at some of those meetings?

A. Never at any meeting I was present.

Trial Examiner Winkler: Are you referring to the witness' [263] work, Mr. Stirling, or to the pilers' work generally?

Mr. Stirling: To the pilers' work.

Q. (By Mr. Stirling): Do you recall a meeting in 1948 at which Mr. Dant and Mr. Sullivan and yourself and Max Gassner and others were present at which time dissatisfaction was expressed by Mr. Dant as to your work?

A. I don't ever recall any such meeting.

Q. Has nobody in management ever complained to you about your leaving lumber piled so that it would be stained?

A. Not in the time I was employed at Dant & Russell.

Q. Has nobody in management ever complained to you about throwing aside the narrower boards and piling only the wider ones? A. No.

Q. Mr. Dant never complained to you about that?

A. No.

Q. Mr. Clark has never complained to you about that? A. No.

Q. Mr. Parker? A. No.

Q. Mr. Troutman? A. No.

(Testimony of Henry J. Christophersen.)

Q. Have any of those gentlemen ever complained to you about leaving early? A. Well——

Mr. Tillman: Do you mean anybody as to the time he [264] referred to with Redman and Cook?

Mr. Stirling: We are past the Redman and Cook era.

Mr. Babcock: I don't think the question so states.

The Witness: Are you referring——?

Mr. Stirling: Well, I am referring to Mr. Dant, Mr. Clark, Mr. Parker, Mr. Troutman,——

A. They never mentioned my going home to me.

Q. (By Mr. Stirling): Has Mr. Parker ever complained to you about your placing of the stickers?

A. No.

Q. Has Mr. Parker ever complained to you about that? A. No.

Q. Have Mr. Parker or Mr. Clark ever spoken to you about how you placed stickers? A. No.

Q. Not once? A. Not once.

Q. Now in connection with stickers, it is possible, isn't it, for one member of a team to put the stickers on crooked and the other to put them on straight?

Trial Examiner Winkler: You mean on the same load?

Mr. Stirling: The reason for my question is this. In his direct testimony this morning there was an attempt to rebutt the testimony that Mr. Parker gave about one piler not doing good work and the other doing—— [265]

Trial Examiner Winkler: It was either all or nothing, as I recall his testimony. Well, that's what you are asking now.

(Testimony of Henry J. Christophersen.)

Mr. Babcock: That was with respect to boards being straight.

Trial Examiner Winkler: Yes, I understand so.

Mr. Stirling: Yes, now I am asking with respect to stickers, and he has not answered the question.

Trial Examiner Winkler: Read the question to the witness.

(Pending question read by the Reporter.)

The Witness: Yes, that's possible, yes.

Q. (By Mr. Stirling): And that has been done, has it not?

A. Not to my knowledge. Are you referring to me that I was laying them crooked or that somebody——?

Q. Yes, I will ask you. Have you never loaded stickers crooked?

A. I laid my stickers in the manner atop as of one another. That is, I laid them straight as far, inasmuch as anybody could lay them straight.

Q. Always? A. Always. [266]

* * * * *

Mr. Stirling: Q. Well, whether you piled or unit or square you have longer and shorter boards to contend with, haven't you, or wider or narrower, excuse me.

A. They are all in one load, the long boards and the short boards, all these boards are in one load. The length is all in one load, but I want to know whether you are referring to—— [267]

Q. Well then, I would not be referring to unit piling then if they are all in one load, would I?

(Testimony of Henry J. Christophersen.)

A. Well, yes.

Q. In unit piling, you keep referring to unit piling. Maybe I am confused myself. I am referring to square piling. When you are doing square piling did you not pile the wider boards before piling the narrower boards? A. Yes.

Q. You did? A. Yes.

Q. And would you not move then from one pile of wide boards to another pile of wide boards rather than to a pile of narrow boards, in doing your piling?

A. Well, we certainly wouldn't move from one end of the short to the other end of the short just to pick up, to pile a lot of narrow, if that's what you mean.

Q. I don't think you answered my question. Would the Reporter please read that?

(Pending question read by the Reporter.)

Mr. Tillman: May I interject a suggestion here? The question is phrased in terms using the words "pile" which in this industry seems to have a distinctive meaning. I assume that the question means a definite move from one load to another load. If it's possible I think the two should be differentiated, load from pile. [268]

Mr. Stirling: Load to load, I will amend that question. Would you read that question with the word "load" substituted for "pile."

(Pending question read with the word "load" substituted for the word "pile."

(Testimony of Henry J. Christophersen.)

The Witness: Not if the narrow board was the next load to us.

Q. (By Mr. Stirling): Isn't it true that you could make more money by piling the wider boards than piling the narrow boards?

A. It doesn't hold true exclusively, no.

Q. As a general rule?

A. As a general rule, yes.

Q. And isn't it true that you have left loads of narrow boards for as long as two to four weeks before piling them?

A. Well, I don't remember, recall any.

Mr. Babcock: Are you still talking about square piling?

Mr. Stirling: Yes, that's obvious, isn't it now?

Mr. Babcock: I don't know.

Trial Examiner Winkler: The chairman of this Board is often quoted as saying that nothing is obvious.

Mr. Babcock: Did you so understand the question, that he was talking about square piling?

Mr. Stirling: He has answered the question.

The Witness: I understand that we are still talking of square piling. [269]

Trial Examiner Winkler: Yes.

Q. (By Mr. Stirling): Now, you made the statement that gyppo pilers or contract pilers——

Trial Examiner Winkler: How do you spell that "gyppo"?

Mr. Stirling: G-y-p-o, I presume.

Mr. Babcock: I don't think it's in the diction-

(Testimony of Henry J. Christophersen.)

ary. I looked it up recently, and I didn't find it in Webster's or abridged.

Q. (By Mr. Stirling): You made the statement that the gyppo or contract pilers do not work as hard as the day labor rate as when they are on piece rate.

A. I don't believe they do. I have never found one yet.

Q. At least you don't yourself? A. No.

Q. Now on July 13th, 14th and 15th of 1949 you asked for that work to which you were assigned; did you not?

A. Yes, in an indirect way.

Q. You asked if there was any work available?

A. Yes, uh-huh.

Q. And Parker assigned you to tearing down this dry lumber? A. Yes.

Q. Now did you and Max Gassner then start at that work on the basis that you would take it easy because you were not doing piece work?

A. Well, we started on the basis that we were working by the day. [270]

Q. In other words, that you would take it easier than when you were doing piece work; is that right?

A. Yes.

Mr. Babcock: Object to that as argumentative.

Trial Examiner Winkler: The witness has answered it.

Q. (By Mr. Stirling): And did you come to work at 7:00 o'clock that first morning of July 13?

A. Yes.

Q. And did Parker assign you to that work then, or did you know previously where the work was?

(Testimony of Henry J. Christophersen.)

A. Well, through our discussion the day before, why——

Q. You knew where it was?

A. Why, I presume that I knew.

Q. Then you went to the location? A. Yes.

Q. When you came on the job then did you go right to work? A. Yes.

Q. Immediately?

A. Yes, I believe, as I recall it, I did look for an apron that morning. We were short one apron, I believe. I tried to see if I could find an apron.

Q. Is it always necessary to have an apron to work on dry loading?

A. It is customary, yes.

Q. Did you find an apron? [271] A. No.

Q. Did you go ahead and dry load without one?

A. Yes.

Q. Isn't it possible for a man at the top of the pile to work without an apron?

A. That's where he was.

Q. Do you provide your own apron when you work ordinarily?

A. Generally, as a rule, pilers do.

Q. And you had not brought yours that day?

A. Yes, I had brought mine that day.

Q. Well then, why were you looking for one?

A. Well, my partner didn't have any.

Q. You helped him look for one?

A. Well, I give him mine, and I went down to see if I could find a light apron because the man on the

(Testimony of Henry J. Christophersen.)

pile doesn't need as heavy an apron as a piler normally uses.

Q. Then you didn't start to work right away then, did you?

A. Well, that is actually part of the job, that is.

Q. Well, I meant you didn't start piling right away then, start tearing down right away?

A. Well, immediately, no, we couldn't because, as I say——

Q. About how long after you got out to the location did you start tearing down the lumber?

A. Well, immediately after we got our blocks set.

Q. Now, about how long after 7:00 o'clock did you start tearing [272] down lumber? Seven o'clock was when you went to work, wasn't it?

A. Yes, well, I would hesitate to say. I never watched the clock.

Q. Well, would you say it was 20 minutes, 30 minutes, 40 minutes, 50 minutes, an hour?

A. Oh, it could have been 15 minutes, something like that, maybe as high as 20 minutes. I don't——

Q. Could it have been as high as 45 minutes?

A. No, it couldn't.

Q. Could it have been as high as 30 minutes?

A. I doubt it.

Q. Could it have been as high as 25 minutes?

A. Well, as I say, I couldn't, I wouldn't want to say. We spent a few minutes looking for the apron.

Q. Did you go around the yard looking for an apron?

A. I was down around the office there, I believe, first. There used to be a couple in the office.

(Testimony of Henry J. Christophersen.)

Q. Did you ask anybody for an apron?

A. Parker finally came out later, and I asked him if he could get an apron.

Q. Came out later? A. Yes.

Q. You mean how late?

A. Oh, it could have been 9:00 o'clock. [273]

Q. Had you started piling in the meantime?

A. Yes.

Q. Did you do any contract piling that day, July 13? A. I believe we piled one load.

Q. One load? A. Yes.

Q. Then the rest of the time you devoted to the tearing down of dry loading?

A. For the rest of that day, yes.

Q. Do you know how much—strike that— you say you believe you piled one load of contract work?

A. Yes.

Q. How much time did you spend on that on July 13? A. Gosh, I don't remember exactly.

Q. Approximately?

A. There was two crews. They called the spare crew over to help us pile it.

Q. Well, I am talking about you and your partner. How long did you spend on it, approximately? Was it in the middle of the morning sometime?

A. I couldn't exactly remember what time of the day. I believe it was in the forenoon.

Q. Then you went back and worked on the tearing down after you did that contract piling?

A. Yes. [274]

Q. Before noon? A. I believe it was.

(Testimony of Henry J. Christophersen.)

Q. Well then, about how much time; about an hour?

A. Oh no, no, it wouldn't be that.

Q. Less than that?

A. It would be less than an hour.

Q. How many board feet are there in a—or was there in that load of contract work that you did, approximately?

A. Gosh, I don't even remember now what kind of lumber it was, at an average, at a round sum, 3,000 to 6,000 feet.

Q. You say you worked less than an hour on it?

A. Yes.

Q. And in less than an hour you piled somewhere between three to six thousand feet of green lumber; is that right?

A. Divided amongst two crews.

Q. Four men? A. Four men.

Q. Or two men, somewhere between 1,500 and 3,000 feet, in other words?

A. Somewheres, yes.

Q. Then you went back to your day labor work, and did you go right to work? A. Yes.

Q. Did you work steadily from then on until lunch?

A. Well, I imagine we did unless we was waiting for the carrier [275] or something.

Q. Well, I asked you do you know? It isn't a matter of whether you imagine, but do you know?

A. There probably could have been a few minutes break between loads, that is, waiting for a carrier.

(Testimony of Henry J. Christophersen.)

Q. Why would you be waiting for the carrier?

A. Well, you wouldn't load another load until the carrier had picked the one up that you had and moved it.

Q. Can't you move on to the next load and start tearing it down before the carrier comes along?

A. Well then, the load would be in his road, too. At this little job we was picking out, as I recall it, the 10 and 12-inch boards in the pile which went on another load, and you couldn't just take that load up and move it. You would have to have that load close by you.

Q. Then after lunch did you go back to your dry loading? A. Yes.

Q. And did you work at it the rest of the afternoon? A. Yes.

Q. Did you work steadily, or did you take a break now and then?

A. Well, probably between loads, as I say, waiting for the carrier we would take breaks, yes. That's customary amongst all of us.

Q. Just waiting, that was the only time you would take a break, just waiting for the carrier? [276]

A. Yes.

Q. And you say that there were approximately two and a half piles of that to dry load, to tear down at that time, you said that in your testimony this morning?

A. Yes, I would say a little over two and a half piles.

Q. About how much of that, this two and a half piles, did you do that day?

(Testimony of Henry J. Christophersen.)

A. Gosh, I wouldn't, I couldn't answer that right directly.

Q. Well, wouldn't you remember about how much you did that day?

A. No, not necessarily.

Q. You remembered that your green load was somewhere between three and six thousand feet?

Mr. Babcock: Objected to as a misstatement of the testimony. He said that it would run that, and he was basing that on general experience which is a very wide range.

Trial Examiner Winkler: What was the question?

(Last question read.)

Trial Examiner Winkler: Well, do you have any reason for remembering one rather than the other?

The Witness: Yes, I would, because——

Trial Examiner Winkler: Would you explain that?

The Witness: I have never before seen two crews of lumber pilers called to pile one little load of lumber.

Trial Examiner Winkler: May I just ask this. With respect to the dry loading, did you have any reason for remembering [277] how much—I mean ordinarily for remembering how much dry loading you would do as a day laborer?

The Witness: No, I have no reason to remember anything like that.

Mr. Stirling: I didn't hear that question.

Trial Examiner Winkler: I asked the witness whether or not he would have any particular reason

(Testimony of Henry J. Christophersen.)

for remembering how much dry loading he had done that day or generally would any day laborer have any particular reason for knowing how much loading he had done of dry loading on that particular day.

Mr. Stirling: What was his answer to that?

Trial Examiner Winkler: He said he had no particular reason for remembering.

Q. (By Mr. Stirling): About how many board feet were in the two and a half piles? Can you estimate that, Mr. Christophersen?

A. Well, I would say there would be in excess of 50,000 feet.

Q. Didn't a pile of that type of lumber ordinarily have 14 to 15 thousand board feet in it?

A. Well, some types of lumber, yes, you could be right, but I think these were, these piles here ran around 20,000.

Trial Examiner Winkler: Why do you say "these piles"? Are you referring to the fact that it was miscut?

The Witness: It was miscut. It just happened that they were a little higher than normal piles.

Q. (By Mr. Stirling): Well, isn't it true that there were actually [278] three and a half piles instead of two and a half piles?

A. Well, it could have been, but I think there was only two and a half piles.

Q. And normally in that type you did say that type of lumber, the piles are somewhere between 14 and 16 thousand feet in a pile; isn't that so? Didn't I understand you to say that?

(Testimony of Henry J. Christophersen.)

A. I didn't say that particular type of lumber.

Q. In other words, you think that these piles had about 20 thousand board feet in each pile?

A. I would say they would run close to 20,000, yes.

Q. Then if there were, if there were three and a half piles, then that would be 70,000 board feet?

A. Yes.

Q. And you estimated that you tore down somewhere in the vicinity of 50,000 board feet?

A. Yes.

Q. You are not certain just how much there was there, are you, or exactly how many piles there were, are you? A. No, I couldn't——

Q. Isn't it true that there could have been three and a half piles then?

A. It could have been.

Q. Isn't it true that those piles could have been somewhere between 14 and 16 thousand board feet in each pile?

A. No, I would say if they was that we loaded in excess of [279] 70,000.

Q. Now, of course, you have already estimated two or three times previously that it was around 50,000? A. Yes.

Q. Now you will just be willing to revise your estimate about 20,000 that easily?

A. No, I wouldn't.

Q. I mean, could there have been that much a difference between what you said it was and what you think it is now?

(Testimony of Henry J. Christophersen.)

A. No, I still don't think there was any more than what I said there was.

Q. About 50,000?

A. I said from 50 to possibly a little stronger.

Q. And there could have been three and a half piles?

A. I don't recall there being three and a half piles.

Q. Hadn't some of that lumber on one of the piles been torn down by some other men?

A. I believe a little had been taken off of one pile.

Q. A partial pile?

A. In fact, I know one pile was a partial pile. That's obvious.

Q. Do you know who tore that down?

A. I never seen anybody tear it down myself.

Q. Now on the 14th did you come to work at 7:00 o'clock on the 14th? A. Yes. [280]

Q. When did you start to work on the 14th?

A. Right after we punched in.

Q. Right after you punched in?

A. Well, we have to go to the yard.

Q. How far is the yard from the time clock, approximately?

A. How far is the yard or the piles?

Q. Oh, you said you had to go to the yard. Now, where did you have to go?

A. Well, the yard was, oh, I would say maybe 150 to 200 yards.

Q. Which is where the piles were?

A. They were farther into the yard.

(Testimony of Henry J. Christophersen.)

Q. And did you go right over there from the time clock? A. Yes.

Q. Then the piles were still farther than the yard?

A. Yes, they were up in the——

Q. Or were they in the yard?

A. They were up in the yard, yes.

Q. Did you go to work right away when you got out there? A. Yes.

Q. Did you have an apron that day?

A. Yes.

Q. Did Max Gassner have an apron that day?

A. Yes.

Q. Did you have occasion to talk to Parker within the first hour of your job that day? [281]

A. No.

Q. You didn't see him?

A. Not in the first hour.

Q. When do you—when did you start—about how long after 7:00 o'clock did you get started on your tearing down that day, July 14th?

A. Oh, a few minutes.

Q. A few minutes? A. Yes.

Q. You mean just four or five or 10 or 15, or what do you mean? What do you mean by a few minutes?

A. I would say not in excess of 10 minutes.

Q. Then you saw Mr. Parker, or did Mr. Parker come and talk to you that morning?

A. No, not that I recall.

Q. He didn't. Did you do any other contract work that morning?

A. Well, in the course of the day we piled some more lumber.

(Testimony of Henry J. Christophersen.)

Q. Did you do that—I asked you if you did any contract piling that morning; do you recall?

A. I don't recall.

Q. Sometime during the day you did some contract piling? A. Yes.

Q. Do you know how much you did, I mean, how much time you spent on the contract piling that day?

A. No, I couldn't say. [282]

Q. Approximately?

A. Well, it would be just a mere guess at it, maybe an hour.

Q. And did Parker assign you to that work or——

A. No.

Q. Who told you to do that work?

A. A spare crew came up and told us that he wanted us to do it.

Q. That was in the morning, you say, or you are not sure whether it was in the morning?

A. I am not sure.

Q. Why can't you place that in the morning when you can place the day before in the morning, your contract work?

A. Well, I said it was in the morning before. I am pretty sure it is because I know that particular day when they sent two crews to pile one load of lumber that would be just like seeing a flying saucer.

Q. Then you came back from your contract piling and went to work on the dry loading again?

A. Yes.

Q. Was that before noon?

A. I couldn't say.

Q. Well then, you are still not certain whether

(Testimony of Henry J. Christophersen.)

you did this contract piling in the morning or in the afternoon of the second day? A. No, I am not.

Q. Did you sit in your car at any time that day? [283] A. Yes.

Q. Did you sit in your car during working hours?

A. We could have, yes.

Q. Did you sit in your car for as much as an hour?

A. No.

Q. How long did you sit in your car during working hours?

A. Oh, maybe a few minutes.

Q. A few minutes. What do you mean by a few minutes?

A. Well, maybe five or six minutes.

Q. And was this after you came back from your contract piling?

A. I don't recall that.

Q. What was the occasion for sitting in your car?

A. Well, we had probably finished a load and went to get a drink of water.

Q. You don't get a drink of water in the car, do you?

A. Yes, we haul our water from Bend to the job. We had asked, as I recall, for special permission to take the car up in back there to haul our drinking water.

Trial Examiner Winkler: Did you have your car in the yard?

The Witness: It was in back of the piles.

Trial Examiner Winkler: I see.

Q. (By Mr. Stirling): It was in back of the piles? A. Yes, right——

(Testimony of Henry J. Christophersen.)

Q. And the car can't be seen from the office, can it? [284]

A. No, not from the office, no.

Q. That's all the longer you sat in the car, five or six minutes? A. I would say that, yes.

Q. It couldn't have been 15 minutes?

A. No.

Q. Or half an hour? A. No.

Q. Or as much as an hour? A. No.

Q. Then on the afternoon of the 14th did you continue tearing down dry lumber?

A. Well, we tore down lumber in the course of the day, as I recall it, yes, in the afternoon we was tearing down lumber.

Q. Were you standing around a little bit from time to time? A. We could be, yes.

Q. In other words, you didn't work too steadily. You more or less took it easy; is that right?

A. Well, we wasn't, we wasn't breaking any records, no.

Q. You were not exerting yourselves?

A. No.

Q. Then on the 15th, July 15, Friday, did you come to work at 7:00? A. Yes.

Q. Punched the clock? A. Yes. [285]

Q. Did you go out to the dry loading job?

A. Yes.

Q. Right away? A. Yes.

Q. And did you start to work right away?

A. Yes.

Q. Right away? A. Yes.

Q. Did you do any contract piling that day?

(Testimony of Henry J. Christophersen.)

A. Yes.

Q. Did you do it in the morning or the afternoon?

A. Well, I couldn't, I don't recall exactly what time of the day it was. The only thing I know, Parker came up and told us that the scaler was over there and for us to go over there and pile lumber.

Q. Parker came up and told you to go down and do this green piling, in other words? A. Yes.

Q. And about how long did you spend on that; do you recall, that day? A. No, I don't.

Q. Approximately?

A. Well, as I understand, there was that day, there was probably three or four loads, possibly five.

Q. And I asked you how long you spent on it? [286]

A. Oh, I would say possibly a couple hours.

Q. How many teams were working on it?

A. Two.

Q. That's a total of four men? A. Yes.

Q. And there were three or four loads?

A. Something like that.

Q. About how many board feet in each load?

A. Well, I don't exactly—as I say, I don't exactly even remember the type of lumber, but it could range from 3,000——

Q. Well, I am asking you if you remember what these loads contained, approximately?

Trial Examiner Winkler: May I suggest, don't guess. If you don't know just say you don't know, but don't guess at it.

The Witness. I don't know, but I believe I have the tickets for those loads.

(Testimony of Henry J. Christophersen.)

Q. (By Mr. Stirling): You don't have them with you? A. No.

Q. So that four of you piled three or four loads of green lumber?

A. Yes, I don't recall the amount.

Q. I thought you usually remembered how much was in a green lumber load because you kept track of that; whereas, you didn't keep track of dry loading because that wasn't paid at piece rate? [287]

A. Well, that particular part is dry. I presume that, being the lumber came from Tite-Knot mill, that there would be around in the neighborhood of 4,000 on that particular job, of lumber, because it was their tally so I took it for granted that it was shop and select which would be around 4,000 per load.

Q. So that the four of you could have piled 16,000 board feet of that in two hours; is that right?

A. That's possible, yes.

Trial Examiner Winkler: Are you talking about the green lumber?

Mr. Stirling: Yes.

Trial Examiner Winkler: May I ask, Mr. Stirling, we are going into the testimony as to how much green piling he did that day and the two preceding days. For my own benefit, will you please tell me the relevancy of that? What difference does it make, for my own benefit again, if they piled 3,000 board feet, 5,000 or 10,000, talking about contract piling?

Mr. Stirling: Well, I think that it is relevant because in a comparable way it shows what can be done with the green lumber, and there has been quite a bit

(Testimony of Henry J. Christophersen.)

of discussion about the amount of dry lumber that was torn down. That's my point.

Trial Examiner Winkler: I mean, for example, you are comparing two things.

Mr. Stirling: Well, they are two separate types of lumber. [288]

Trial Examiner Winkler: But are you comparing contract piling with dry loading which is one difference, but you are comparing different types of lumber which I presume require, some lumber may require more work, more time than other. I mean, I want to understand your point. I want to give you the benefit of your point. That's why I asked you this question.

Mr. Stirling: Well, of course, all those things are being brought out and are no doubt being taken into consideration.

Trial Examiner Winkler: If you think this is relevant I will take it. It's relevancy escapes me at the moment.

Mr. Stirling: I think it's also relevant for this reason. Mr. Christophersen's estimates of what he did dry load or green are guesses. He doesn't know, and we will show how much dry loading he did actually do, he and his partner.

Mr. Tillman: If I may interject something there, the record already shows from Mr. Parker that the Company conceded 50,000 had been loaded.

Trial Examiner Winkler: I am going to ask counsel whether or not he is prepared to show through inventories the amount of dry loading that was done during those three days; are you able to show that?

Mr. Stirling: Yes.

(Testimony of Henry J. Christophersen.)

Mr. Babcock: If he is trying to prove that these two men didn't work as hard at day labor as contract, there is no [289] dispute about that. It is admitted.

Trial Examiner Winkler: I mean, in the record that's not contested. Continue, please.

Q. (By Mr. Stirling): Now, didn't Parker come over to you on either Thursday or Friday and ask you if there was anything the matter, if you needed anything? A. No.

Q. He didn't?

A. No, I asked him for an apron.

Q. That was on Wednesday?

A. On Wednesday.

Q. Do you mean that you didn't talk to Parker at all on Thursday or Friday?

A. The only words that was spoke between us was that he told us to go down and pile lumber.

Q. Didn't he come over and ask you if you needed any carrier bunks or anything else? A. No.

Q. To do your work over there? A. No.

Q. At the dry loading? A. No.

Q. You are positive of that? A. Yes.

Trial Examiner Winkler: What are carrier bunks? [290]

Mr. Stirling: They are the wooden blocks, as I understand it, that the lumber is first placed on.

Trial Examiner Winkler: Oh, carrier blocks?

Mr. Stirling: They call them bunks.

Trial Examiner Winkler: Oh, I understand.

Q. (By Mr. Stirling): So you had no conversa-

(Testimony of Henry J. Christophersen.)

tion with Parker on Thursday or Friday other than his direction that you go down and do this contract piling; is that right? A. That's right.

Q. Did you observe Parker going through the yard from time to time on Thursday and Friday?

A. Yes, I seen him drive by a couple times.

Q. While you were piling green lumber—this is not on July 13th, 14th or 15th, but in the course of piling green lumber did you or did you not leave piles of narrow, loads of narrow boards unpiled until they became stained?

A. How do you mean that? Did I voluntarily go off and leave them?

Trial Examiner Winkler: Read the question, please.

(Pending question read.)

The Witness: You are referring back to square piling?

Mr. Stirling: That's right.

A. Not deliberately, no.

Q. (By Mr. Stirling): What do you mean "not deliberately?"

A. I never ran off and left any deliberately. That is, I piled [291] the lumber as I got it.

Trial Examiner Winkler: Let me ask this, in fairness to the witness. Are you aware of any time that there was any staining of lumber during this period?

The Witness: There was some 4 and 6-inch that had stained, yes.

Trial Examiner Winkler: Now are you aware of any time that you were responsible for the staining of that lumber?

(Testimony of Henry J. Christophersen.)

The Witness: No.

Trial Examiner Winkler: By not piling it when you should have piled it?

The Witness: No.

Trial Examiner Winkler: Continue, sir.

Q. (By Mr. Stirling): Why was this lumber stained, these and 4 and 6-inch boards, how did it get stained? A. Well, just——

Trial Examiner Winkler: To help me now, as of what period are we talking? May I ask counsel what period are you referring to?

Mr. Stirling: In his work as a green piler during the square piling period.

Trial Examiner Winkler: During the square piling period?

The Witness: What was the question?

Trial Examiner Winkler: Will you read the question, please? [292]

(Pending question read.)

The Witness: Well, it sat in the loads too long.

Q. (By Mr. Stirling): Wasn't it the pilers responsibility to pile those loads before they did stain?

A. Not directly, no. It could have been other types of lumber stained if they were not piled.

Q. What do you mean "not directly?"

A. Well, it wasn't directly our responsibility. Had we had a direct order to go down and pile it, then we would have gone down and piled it.

Trial Examiner Winkler: Who told you to pile the lumber? I mean, were you told, "Now there is a

(Testimony of Henry J. Christophersen.)

load to pile. Do that." Were you told which lumber to work on?

The Witness: Not exactly. When we would come to work in the morning, if that particular day the kiln had to be piled, that is the charge to be put into the kiln, they would generally tell us to pile that charge, and we would go ahead and pile it. Then we would go to the yard.

Q. (By Mr. Stirling): Did you ever ask for and receive additional compensation for piling those narrow widths even though your contract called for a the same rate for all?

Mr. Babcock: Object to that. The contract doesn't call for anything.

Trial Examiner Winkler: Does the contract provide for this matter, Mr. Stirling? [293]

Mr. Stirling: The contract does not provide, the contract that you have there does not provide for a wage rate, but Mr. Christophersen knows what the rates were. He was a member of the rules committee and he was acquainted with those things.

Trial Examiner Winkler: May I ask, what is the relevancy of this?

Mr. Stirling: Certainly, the reason for him leaving these narrower boards to stain. Our contention is, and has been right along, that one of the faults of Mr. Gassner and Mr. Christophersen was that they left the narrow boards, board loads, lying and went ahead and did the wider boards.

Trial Examiner Winkler: The wider boards?

Mr. Stirling: Because they could make more money doing that.

(Testimony of Henry J. Christophersen.)

Trial Examiner Winkler: Make more money doing that. Well, that's true. Now where do we go?

Mr. Stirling: Now then, I have asked him in connection with that, I have asked him this last question about him asking and receiving additional compensation for piling the narrow boards when the contract rate was the same for all.

Trial Examiner Winkler: The thing I am getting at, assuming the rate is the same for all types of boards or lumber, what difference does it make whether he is getting more, I mean, as far as your case is concerned?

Mr. Stirling: Well, it seems to me that it definitely [294] shows that, the motive in leaving these narrower board to sit.

Trial Examiner Winkler: Well, I think, well, so far as the record is concerned at the moment, counsel, please, I hope you both listen to me at this time, I think the record establishes very clearly the men would make more money working with the wider boards than with the narrower boards; is that correct?

Mr. Stirling: True.

Trial Examiner Winkler: Now on that assumption, doesn't that prove your point?

Mr. Stirling: Well, I am showing by this question the motive that they had in leaving the——

Trial Examiner Winkler: Are you now saying that they deliberately caused wood to be stained in order to get a higher rate for the narrow lumber?

Mr. Stirling: I do contend that.

(Testimony of Henry J. Christophersen.)

Trial Examiner Winkler: Would you read the question, please?

(Pending question read by the Reporter.)

Mr. Babcock: My objection is to the form of the question which is, in effect, a compound question and assumes something about a rate which is not in evidence. I have no objection to the subject matter being pursued.

Trial Examiner Winkler: Would you read the question, please?

(Pending question read.) [295]

Trial Examiner Winkler: Mr. Stirling, I suggest we break this into two parts. Let's take the latter part first, I think.

Mr. Stirling: All right.

Q. (By Mr. Stirling): On this square piling back in 1948 and 1947 what was your rate of pay for the green piling?

A. I don't exactly remember.

Trial Examiner Winkler: Do you remember whether you had the same rate of pay for all widths? Is that the question you want to ascertain?

Mr. Stirling: I still think that he could answer my question without our determining what the rate was. I don't know myself what it was.

Trial Examiner Winkler: That's what I say, that doesn't seem to be a relevant point.

Mr. Stirling: No.

Trial Examiner Winkler: Did you have the same rate for all widths?

The Witness: Yes.

(Testimony of Henry J. Christophersen.)

Trial Examiner Winkler: Is that what you want to ascertain?

Mr. Stirling: Yes.

The Witness: In the yard, all that was piled in the yard.

Trial Examiner Winkler: Now then, the next part of your question? [296]

(Pending question again read by the Reporter.)

The Witness: I never asked for it, but I was offered additional pay.

Q. (By Mr. Stirling): Why were you offered additional pay for doing that?

Trial Examiner Winkler: May we fix the time of doing this, too?

The Witness: I remember at the time I was bar piling, that is, I was working not with the machine.

Q. (By Mr. Stirling): Now are you answering my question as to why you were offered additional pay? A. Yes.

Q. It doesn't sound to me like you are. Just answer the question, please.

A. I will have to, in order to explain it, at the time I was bar piling Mr. Anderson asked us one day if we would go down and pile 4 and 6-inch. He said, "There is a lot of it." I says, "Well, we will pile some." He says, "If you guys go down and pile that I will give you scale and a half," he says, "we are getting so much of it." Well, it isn't customary to give one crew all of the poor lumber to pile; therefore, when he asked us to go down there we did go down and pile it.

(Testimony of Henry J. Christophersen.)

Q. Why had that been accumulated? Why hadn't you already piled that? A. I don't *you.* [297]

Q. You don't know? A. No.

Q. You were a piler, weren't you?

A. I was a piler, yes.

Trial Examiner Winkler: When was this?

The Witness: This was shortly after I went to work there.

Trial Examiner Winkler: 1947?

The Witness: In 1947.

Q. (By Mr. Stirling): Weren't the pilers supposed to pile whatever piling there was to do?

A. They were supposed to pile what piling they could do, yes.

Q. Well, couldn't you pile 4 and 6-inch boards?

A. Yes.

Q. Well, why hadn't you piled that?

A. Well, the pilers are not in a supervisory capacity down there. The piler is just working there.

Q. In other words, you would do one load, and then wait for a supervisor to come and tell you where the next load was that you were to pile?

A. Why, no.

Q. You didn't have to be told where every load was, did you?

A. Why, of course not, a piler never takes the worst stuff first.

Q. He does the best?

A. He takes the best first. That's common knowledge throughout [298] the entire industry.

Q. Then he does the best until it runs out then, in other words?

(Testimony of Henry J. Christophersen.)

A. That's what I have always found wherever I have worked.

Q. At least, you have worked on that basis?

A. Well, I wouldn't say that particularly.

Trial Examiner Winkler: Would you say it's the practice, so far as you know, of all the pilers at the Company's operations?

The Witness: Yes, where I——

Mr. Tillman: Now I think we should know a definition of what "best" means there, best from the standpoint of the Company or the piler?

Trial Examiner Winkler: Before we get on with this, was anyone else involved in this incident in 1947 where you were offered more money to do this narrow lumber?

The Witness: As I understand it, they give it to all the pilers.

Trial Examiner Winkler: Who else was asked to go down and work on this narrower lumber?

The Witness: At that particular day it was just one crew that was asked.

Trial Examiner Winkler: Who was this one crew?

The Witness: That was myself and my partner.

Trial Examiner Winkler: Who was your partner?

The Witness: I was piling with Herman Kramer.

Trial Examiner Winkler: Do you know why the others were not asked?

The Witness: No, I do not.

Trial Examiner Winkler: Had they been piling this narrow lumber at the time?

The Witness: Yes, that is, it had been—you know,

(Testimony of Henry J. Christophersen.)

previous to that there was narrow piles there.

Trial Examiner Winkler: I know, but had the other teams been working on this narrow lumber when you were asked to work on it?

The Witness: I couldn't say that. I presume they had been for we was bar piling, and perhaps he figured that if he would let the bar pilers go down first so that they could put the first load on the bottom of the pile, then the machine could probably later on come down and pile.

Q. (By Mr. Stirling): Weren't you as a piler expected to continue piling each day as long as there was lumber there to pile? A. Why, yes.

Q. And then weren't you expected to continue to pile 4 and 6-inch widths if they were there and you ran out of the other? A. Yes.

Q. Without getting an additional pay for it?

A. Yes.

Trial Examiner Winkler: Has the witness testified that he had ran out of work? Had you ran out of work, Mr. Christophersen? [300]

The Witness: No.

Q. (By Mr. Stirling): Well, aren't you supposed to pile the lumber as it is and not go, not do, as it comes in from day to day and not do all of the long until you run out of that—or all of the wide and then go back to the narrow?

A. Why no, I couldn't say that.

Q. In other words, you would pile all of the wide first as long as the wide kept coming in, as long as the wide kept coming in you would pile it?

A. Yes.

(Testimony of Henry J. Christophersen.)

Q. And let the narrow sit? A. Yes.

Q. Regardless of whether it stained or not?

A. Yes.

Q. Now on these grievances that you brought up from time to time were you directed by the membership to bring those up, or did you just bring them up on your own?

A. I was directed by the membership.

Q. At a meeting of the membership?

A. Yes.

Q. All of these grievances that you testified about in your direct examination the other day?

A. Yes.

Q. In every case you were directed by the membership to bring those up? [301] A. Yes.

Q. You say you piled some—or tore down some dry lumber in the winter of 1948-49 in your testimony this morning. A. Yes.

Q. Did you actually do very much of that?

A. Not any great amount, no.

Q. Would you say, and are you speaking of a period covering how many months when you say that you did this dry loading?

A. No months involved. I would say a few days.

Q. Just a few days? A. Yes.

Q. And that's all the dry loading that you did that winter? That's what you are referring to in your testimony this morning; is that right, or the dry tearing down, dry loading and tearing down?

A. Yes.

Q. This dry loading that you did, wasn't that all

(Testimony of Henry J. Christophersen.)

pretty much the same lumber that you tore down on July 13th, 14th and 15th?

A. There is no connection between the same type.

Q. Now with respect to these grievances in May or June of 1947, you stated that one of Bailey's men refused to join the union, and you talked to Bailey about it. Did you yourself talk to Bailey?

A. I accompanied Max Gassner.

Q. And had Max been directed by the Union to take that up? [302]

A. That I couldn't ask as I wasn't a direct member of the committee on that particular occasion. He asked me if I would go, accompany him and go over and talk to Bailey about it.

Q. Why did he ask you to do that if you were not a member of the committee?

A. Well, I suppose he couldn't find any of the members of the committee handy.

Q. So nobody directed you to take that up?

A. No, only that I went along as an accommodation.

Q. Then you took up a matter of an employee quitting in April, 1948 about vacation pay, you said. Do you remember that instance? A. Yes.

Q. Were you a member of the committee at that time? A. Yes.

Q. Had the Union directed you to take that matter up?

A. Well, the matter was taken up in rather an unofficial manner. The man was leaving immediately, and he had asked about that.

(Testimony of Henry J. Christophersen.)

Q. What do you mean it was taken up in an unofficial manner?

A. Well, he came and asked, inquired about it.

Q. Who did he ask?

A. He asked myself about it, and I asked—Mr. Parker at the time was a member of the committee and also Mr. Gassner, and I said, "Being as you are going to leave let's just go in and ask Mr. Redman." [303]

Q. You were not directed by the Union at that time to take it up? A. No.

Q. Did you take time off? A. No.

Q. From your work to go down and do that?

A. No.

Q. What time of the day was it taken up?

A. It was taken up in the noon hour. [304]

* * * * *

Q. (By Mr. Stirling): Now, insofar as this Bishop discharge was concerned, you said you had something to do with that? A. Yes.

Q. What did you have to do with that?

A. Well, at the time it happened I believe Mr. Cook talked to me about it, and I asked him if we could——

Q. Mr. Cook talked to you about it?

A. Yes.

Q. What did Mr. Cook ask you about it?

A. Well, he came out. There had been a complaint and——

Q. There had been a complaint by whom?

A. By Bishop.

Q. You mean he had come out to the plant and

(Testimony of Henry J. Christophersen.)

talked to the manager or he had made a complaint?

A. How it was he made his complaint, he made his complaint to the committee.

Q. Were you a member of the committee at that time? A. Yes.

Q. That was in what time of the year?

A. That was in the summer. [305]

Trial Examiner Winkler: Summer of 1948?

The Witness: Summer——

Trial Examiner Winkler: You are talking about the first discharge; is that right?

The Witness: Yes, of 1948.

Q. (By Mr. Stirling): Then Mr. Cook came out and talked to you about it? A. Yes.

Q. Or did you go to him?

A. Well, he came out and talked to me about it.

Q. And your committee took that up for Bishop not upon directions from your Union, in other words?

A. Bishop had made the complaint to the Union. We were to have a meeting which would bring it out officially.

Q. Did you have that meeting?

A. We did later, yes.

Q. Now you mentioned a grievance about fir in the spring of 1949. Did you take part in that?

A. I don't recall any grievance of fir in 1949. I recall—I think you are referring to 8-quarter.

Q. Perhaps that was it, 8-quarter.

A. Yes, I recall that.

Q. Were you a member of the committee at that time? A. Yes.

(Testimony of Henry J. Christophersen.)

Q. What procedure was followed in that instance? Did you take [306] that up with the management?

A. After we had been instructed by the Union.

Q. How were you instructed by the Union?

A. At the meeting they instructed us to take it up.

Q. At the meeting of the entire Union?

A. Yes.

Q. Where was that held?

A. In Redmond.

Q. Then that grievance was dropped, as I understand it; is that right? A. Yes.

Q. So that some of these grievances actually were—you did get instructions from the Union, and some of them you took up on your own?

A. I never took up any on my own.

Q. Well now, some of those that I asked you about you took up on your own, as I gather from your testimony.

Trial Examiner Winkler: May I ask what difference it makes?

Mr. Stirling: I think it makes a great deal of difference whether he is acting for the Union or acting merely in an offhand way for himself.

Trial Examiner Winkler: Let's see, the basis of discharge here, the alleged basis rather, is that this man loafed on the job, did some of his work clumsily. Are you now alleging——? [307]

Mr. Stirling: I have a right to rebutt the direct testimony.

Mr. Watts: In one case he would be acting in an official capacity and in another case he wouldn't.

(Testimony of Henry J. Christophersen.)

Trial Examiner Winkler: The reason why I asked you these questions is so that I can understand your position because offhand, to me at the moment, in my opinion, it doesn't make any difference so far as Union activities were concerned whether he does it with direct authorization of his Union or does it unofficially as a Union member or unofficially as a committeeman. I mean, to me, it makes no difference. It is all Union activity, you see, so I want to understand what your position is.

* * * * *

Q. (By Mr. Stirling): With respect to the strike in 1948, Mr. Christophersen, was—an agreement was reached that this vacation pay would be paid, and the men went back to work; did they not?

A. Yes.

Q. So that the pilers' piling rate was not determinative of the settlement of that strike?

A. Well, it wasn't——[308]

* * * * *

Trial Examiner Winkler: My function, I suppose, is to establish the facts. Now the fact I want to know at the moment is this. Do you know the basis upon which the strike was settled?

The Witness: The basis it was settled?

Trial Examiner Winkler: I mean, I asked you one question, that is, do you know the basis for settlement, the basis for settlement?

The Witness: The basis, as I understand it, was settled for the vacation pay.

Mr. Stirling: That answers that.

(Testimony of Henry J. Christophersen.)

Q. (By Mr. Stirling): Then the men went back to work? A. Yes.

Q. And at a subsequent time a different pilers' rate was agreed upon at a meeting between the employer and the Union representatives? A. Yes.

Q. And that meeting was a meeting after the end of the strike?

A. Yes, something like that. I don't remember just when it was. [310]

* * * * *

Re-direct Examination

Mr. Tillman: Are you through, Mr. Stirling?

Mr. Stirling: Yes, you go ahead.

Trial Examiner Winkler: The witness is subject to recall at Mr. Stirling's request.

Q. (By Mr. Tillman): One minor question before we get started. I believe I heard you say that two of the people who attended this one meeting both had the name of Red, Red Brown and Red Conger; is that correct? A. Yes.

Trial Examiner Winkler: Which meeting are you talking about?

Mr. Tillman? Well, it was the meeting that took up the grievance of the discharges. At that first meeting who was present for management?

A. Mr. Clark and Mr. Parker.

Q. (By Mr. Tillman): And who acted as spokesman for management?

A. Well, Mr. Parker done most of the speaking. [312]

Q. When the committee first went in there what was the opening discussion? How did you get started?

(Testimony of Henry J. Christophersen.)

A. Well, I don't just remember the exact way of opening, but, generally, when they opened a meeting we stated the reason we was there.

Q. How was it determined that Mr. Parker was spokesman?

Mr. Stirling: Excuse me, did I understand that Mr. Christophersen was at this meeting?

Mr. Tillman: Yes.

Trial Examiner Winkler: This was the first meeting, I believe. Read the question.

(Pending question read by the Reporter.)

The Witness: I just took it for granted because he done all the talking.

Q. (By Mr. Tillman): Did Mr. Clark make any statements during the course of the meeting concerning why you had been discharged?

A. He said that we had not done enough work to suit him.

Q. And you had also testified that Parker made a similar statement?

A. No, that's Mr. Parker made the statement.

Q. My question was did Mr. Clark make any statement?

A. Oh, Mr. Clark, I don't recall that he made any statement.

Q. Was there any discussion between the Union and the Company at that meeting as to the amount of lumber that was loaded out in the three days you worked? [313] A. Yes.

Q. And what position did the Union take as to the total amount?

A. We agreed that 50,000 was a reasonable figure.

(Testimony of Henry J. Christophersen.)

Q. Who is "we"?

A. Myself and the committee.

Q. Did the Company give any figure during the course of that meeting as being the total amount that you two men loaded out?

A. They agreed that it was around 50,000. [314]

* * * * *

Q. (By Mr. Tillman): Reference was made again on cross examination to that incident leading up to the Cook statement where the pilers as a group went home in the morning because no one knew where to pile. Now you testified that you spent a couple hours trying to find out where to pile. My question is were you paid while you were trying to find out where to pile? A. No. [316]

* * * * *

Q. (By Mr. Tillman): In describing the process of loading out those piles of miscuts you mentioned one statement that you had picked out the 10 or 12, 10-inch and the 12-inch, I wasn't quite sure that the record was clear on that. What did you mean by picking out the 10-inch and the 12-inch boards?

A. We kept them on a separate load themselves.

Q. How many loads were you piling at one time then?

A. We was actually piling two loads at one time.

Q. What size boards were in the other load?

A. Well, we had various, all other widths was in the other load except the 10 and 12-inch.

Q. Those would be widths below 10 or above 12?

A. Well, they would be mostly below 10, but they could be above 12, some above 12.

(Testimony of Henry J. Christophersen.)

Q. Now in piling, in loading out two loads and sorting your lumber, in that process does that slow up your operation of loading out?

A. Yes, some.

Q. In these various times during July 13th, 14th and 15th when you were called over to do some contract piling were you paid at the regular contract scale? A. Yes. [317]

* * * * *

Q. In your experience as a piler has the taking of a vacation or laying off for a period of a time affected the speed with which you can pile when you returned to work?

A. I didn't quite understand that.

Mr. Tillman: Will you read the question, please?

(Pending question read by the Reporter.)

The Witness: Yes.

Q. (By Mr. Tillman): What is the effect or how does it——?

A. Well, if you are soft it takes a few days to get back into hardening your muscles again.

Q. That is, you do get stiff faster taking a vacation? A. Well——

Trial Examiner Winkler: May I at this point understand the General Counsel's position. Are you taking the position with respect to the dischargees' work on these three days in July that they did a normal amount of work in loading, or are you suggesting that perhaps they didn't do what might be considered a normal amount of work, or that there were reasons for not doing it; namely, that one of the men had taken a vacation? What is your position? [318]

(Testimony of Henry J. Christophersen.)

Mr. Tillman: I am taking the position that they did at least a normal day's work every day worked, and then I am throwing in these additional circumstances which would in effect say that they did more than a normal day's work.

Q. (By Mr. Tillman): Then I understand that you have described where the 4-inch and 6-inch lumber was stained by remaining in the loads too long in some questions following that particular incident you testified that the pilers always took the best stuff first. Now, what did you mean by saying that the pilers always took the best stuff first?

A. Well, it's referring to—speaking of piling, the bigger your lumber is the more money you can make which, naturally, from our standpoint would be better lumber. Also your larger cuts of lumber are of a higher value, or I would say your larger cuts are really more valuable than your smaller cuts are.

Q. As I understand it then, it was a case of leaving some lumber unpiled, and you chose to pile that which was the biggest in size; is that right?

A. Yes.

Q. And, as you explained, also the best in quality?

A. Yes.

Q. Why was it that the piling crews, not just you, but the piling crews were unable to pile all that lumber that was on hand?

A. Well, you can only pile so much lumber. [319]

Q. And what were the conditions that prevailed at the time that this 4 and 6-inch was allowed to stand?

(Testimony of Henry J. Christophersen.)

A. I would say it was probably a little too much lumber.

* * * * *

Q. (By Mr. Tillman): When was the incident?

A. That was when we were square piling from 1947 until we went unit piling.

Q. You mean it happened more than once that those 4's and 6's [320] were left unpiled?

A. Yes. [321]

* * * * *

Examination by Mr. Babcock

Q. (By Mr. Babcock): Hank, at the time of these incidents or these occasions when it was testified there was too much lumber and some of the small stuff got stained, did you at any time refuse to pile that? A. No.

Q. Did the other crews do anything differently at that time than the crew that you were on, that is, the team that you were on?

A. You mean the other crews piling?

Q. The other pairs. [322]

A. The other pairs, no.

Q. Who were you working with at the time?

A. I was working with Pivinski.

Q. Pivinski?

A. Yes, I worked with Pivinski and Kramer both.

Q. Were you ever warned individually that you might be discharged if any more lumber was stained?

A. No.

Q. Was the crew as a whole ever warned of that?

(Testimony of Henry J. Christophersen.)

A. Not to my knowledge.

Q. And on these occasions were the members of the crews at all times busy, working steadily at piling lumber? A. Yes.

Q. Was Parker engaged in lumber piling at that time on any of those occasions?

A. I believe Parker first became engaged in piling in the summer or early fall of 1948.

Q. Was that after or before the change from the square piling to the unit piling?

A. That was right at the tail end of the square piling.

Q. At that time or about that time were there any instances in which lumber got stained?

A. Yes.

Q. Was he piling at that time?

A. Yes. [323]

Q. Was his conduct any different than anybody else's? A. No.

Q. Now, is it uncommon among contract pilers for the men to take periods in which they rest or leave early in the day?

A. It's generally, it's generally, as a rule all contractors leave a little early, yes.

Q. Are they held to the same schedule of shift hours as the other employees who work by the hour?

A. Yes, they report in.

Q. Report in at the same time?

A. Yes. [324]

* * * * *

Q. (By Mr. Babcock): Hank, while you were

(Testimony of Henry J. Christophersen.)

working there at this unit piling what kind of stickers were used to place between the lumber on the loads?

A. Well, at the time I was working there they varied in thickness considerably. Some was 5-quarters; some was 4-quarters. [328]

Q. Were these sticks rough or planed?

A. They were rough.

Q. What was the size of them?

A. Well, they varied in thickness. Some was 5-quarters; some was 6-quarters.

Q. How about width?

A. The width varied some in some cases, too.

Q. And the length was——? A. Uniform.

Q. How long were they?

A. I believe, I am not positive to the exact length. I think they were 52 inches.

Q. Now if the stickers are not uniform in thickness, does that affect the load in any way, the stability of the load? A. Yes.

Q. How does that affect it?

A. Well, if you have two stickers of different thickness, one sticker must be laying loose because a thick sticker holds the lumber, of course. In other words, if you have a thin sticker with it, why, it's bound to be loose.

Q. Then what method was there of lining up the stickers to that they would be in line of the loads at that time?

A. Well, all we would do, we laid them straight as we piled them, and that was as far as we could go.

Q. Was that by eye, or did you have a guide? [329]

(Testimony of Henry J. Christophersen.)

A. We had a guide on one side of the load.

Q. What sort of guide was that?

A. It was just a stick.

Q. What sort of a bunk or whatever they call it did you have to load against?

A. Well, it was the rack, just a wooden backstand that stood on the side of the load.

Q. Now, after a carrier load—strike that—how were the loads moved away?

A. They were moved by carrier.

Q. Were lift trucks used for that purpose at that time?

A. Not at that particular date.

Q. Then after a load has been loaded, after it is moved——

Mr. Stirling: Excuse me just a minute, at that time, what does that time refer to?

Mr. Babcock: At the time he was piling there, unit piling, which would be from the fall of 1948 until the time of your discharge, I take it? A. Yes.

Q. (By Mr. Babcock): Did you so understand my question?

A. I so understood it.

Q. After a load has been finished and is subsequently moved, is it possible for the stickers to be displaced and moved around? A. Yes.

Q. How would that happen? [330]

A. Oh, it would happen in moving the load.

Q. After the load had left the place where it was built up was there any way to tell which piler had worked on which end of the load? A. No.

Q. Now after a load is made up, from observation,

(Testimony of Henry J. Christophersen.)

just from casual observation, could you tell how the stickers were placed in the load, whether they were even with each other and whether they were even, that is, whether they were at direct right angles with the load?

A. Well, before the load was——

Q. Or would you have to carefully examine a load to determine it?

A. No, if the loads, before you should move, why, yes, you could observe whether it was straight or not.

Q. Could you observe by just walking by, or did you have to stop and look at the stickers individually?

A. You should be able to observe it as you walk by.

Q. You could see the end of the stickers, could you? A. Yes.

Q. One end of the stickers? A. Yes.

Q. Do you know whether or not any change was made in the method of making up those piles after you left there?

A. I understand they were. [331]

* * * * *

Trial Examiner Winkler: Mr. Stirling?

Re-cross Examination

* * * * *

Q. What is the greatest number of board feet you have dry loaded in your time at Dant & Russell in an hour?

Mr. Babcock: Objected to as immaterial and on the further ground that no foundation laid for it. He has already testified——

Mr. Stirling: No foundation is necessary to be laid for it.

(Testimony of Henry J. Christophersen.)

Mr. Babcock: No, no.

Mr. Stirling: I am not asking, not about this rate now. He answered that question. I am asking about dry loading. We have eliminated the piece rate question. I am asking what is the most he ever did dry loading in an hour. That is certainly pertinent.

Trial Examiner Winkler: Before we get to that question, would you know?

The Witness: No.

Q. (By Mr. Stirling): Would you even have an approximation, an estimate?

A. Well, you are asking me what is the greatest I ever did. I did load a couple loads for accommodation down there one day which would not have any bearing on the case. [333]

* * * * *

A. You are asking me as to day labor.

Q. Well, you said that you had done no dry loading on the piece work basis at Dant & Russell.

A. That's right.

Q. All right then, the only dry loading you ever did was on the day labor rate; is that right?

A. Actually, yes.

Q. All right, what is the most you ever tore down in an hour's time?

Trial Examiner Winkler: If you know.

The Witness: I couldn't answer a question directly like that.

Q. (By Mr. Stirling): Why can't you?

A. Well, it wouldn't be fair because a man, you come out and ask me to accommodate him. He may

(Testimony of Henry J. Christophersen.)

come out close to quitting time and ask me to give you a——

Q. I am asking you, Mr. Christophersen, do you know or can you estimate what the greatest amount of board feet you have torn down in any one hour is?

* * * * *

Trial Examiner Winkler: Do you keep any records of the amount of dry loading you do on an hourly basis or day basis?

The Witness: No.

Mr. Stirling: My point is this. He has done dry loading, and he certainly is in a position to estimate what his dry loading was. As a matter of fact, if a man has had some experience dry loading, little as his might have been, he knows.

Trial Examiner Winkler: I will permit the question, and I will permit an answer.

Mr. Stirling: It's very pertinent because that's exactly what he was doing these three days.

Trial Examiner Winkler: Yes, well, I am going to ask the further question, if the answer, the information he gives, it would not be worth anything unless he give comparable weather conditions. He has testified it was better than 100 degrees that day, you can work on a cold day better than you can on a very hot day. I would also want to know the nature of the lumber he is working with at this time. If I have that, it will help me resolve the issues, but if I don't it cannot be helpful. Now you may continue if you wish to bring out all that testimony.

Mr. Stirling: Well, I can't ask him about every

(Testimony of Henry J. Christophersen.)

load identical with his loads that he piled those three days because [335] it was different lumber. It may have been the same type of lumber, but it was, it was a different load.

Trial Examiner Winkler: Well, I will permit your question. I am putting you on notice, however, that so far as I am concerned it needs this other information in order to give it probative value. I tell you that in fairness to you.

Please read the question.

(Pending question read.

The Witness: I wouldn't know.

Q. (By Mr. Stirling): Wouldn't you even be able to estimate? A. No.

Q. Do you know what the least number of board feet you ever tore down was? A. No.

Q. No you made the statement pilers always take the best stuff first, and I believe you indicated before that that was your own situation. Do I understand you to mean by that that where you have a line of loads of lumber that you would take the wide board load first and that you would even skip piles of narrow boards in order to get to the wide board piles?

A. No, if that lumber is dumped in a row like that you would take it as it came.

Q. And did you always take it as it came?

A. Yes.

Q. Well, in this instance in 1947 particularly when you stated [336] that there was 4 and 6-inch widths left unpiled, wasn't some of that brought in at the same time as the wide board loads?

(Testimony of Henry J. Christophersen.)

A. Yes.

Q. And wouldn't it have been in the same line? In other words, wouldn't that have been available after you did a wider load, wouldn't some of those have been available to do? A. No.

Q. Why not?

A. Well, generally, your yard is situated that the various types are piled in various parts of the yard.

Q. You mean that the narrower loads were piled in a different place in the yard than the wider loads?

A. Yes.

Q. And if a load of narrow and wide came in one day you would do the wide that day, and if a load of narrow and wide came in the next day you would still do the wide the next day; is that right.

A. Yes.

Q. And leave the narrow stuff sitting?

A. Yes.

Q. Do you know what the result of staining is?

A. Yes.

Q. Doesn't it depreciate the value of the lumber?

A. Not, it does not depreciate the value so much in common lumber as it does selects and shops. [337]

Q. It depreciates your value of all lumber that is stained; does it not? Any lumber that is stained is depreciated in value; is it not?

A. Well, to some extent. I don't believe it hurts in the common type as much as it does in select and shop.

Trial Examiner Winkler: Are you testifying that all lumber is depreciated in value except in the select

(Testimony of Henry J. Christophersen.)

that the depreciation is greater than that, but in all lumber it would depreciate in value by staining; is that correct?

The Witness: Well, to some extent, I believe I would have to say yes.

Q. (By Mr. Stirling): Now you stated that the Company was not prohibited by the contract from bringing in additional crews. Would it be possible to get additional crews to pile only 4's and 6's?

A. Well, I imagine it would be rather hard.

Q. Why is that so?

A. I don't think any crew would want to just pile 4's and 6's. [338]

* * * * *

Q. (By Mr. Stirling): What happens if the stickers are not placed straight in a row?

A. Well, you get kinky lumber. The lumber, if you lose them out completely, there is a possibility of bluing.

Q. And could the lumber warp if the stickers are not in properly?

A. Yes, that's what I meant when I said they would kink.

Q. Well, as I understand it, you always had a guide for your stickers? A. Yes.

Q. And you always got your stickers in straight?

A. Yes.

Q. At some of these meetings which you attended in 1948 with other members of the Union and Company representatives wasn't this matter of staining discussed and the matter of 4's and 6's being left unpiled?

(Testimony of Henry J. Christophersen.)

A. I don't ever recall that coming up to any meeting.

Q. At no time do you recall any dissatisfaction being expressed on the part of management as to your failure to pile the narrow boards?

Trial Examiner Winkler: By failure to pile do you mean the witness' failure or all the pilers' failure?

Mr. Stirling: Well, I am asking as to the witness now.

A. No, I was never——[339]

Q. (By Mr. Stirling): And all these grievances that you were involved in with the exception of your discharge were either resolved or dropped; is that right?

A. I don't just get what you mean there.

Q. Well, what don't you understand about it?

A. Well, you say resolved. Do you mean that they were either settled or——

Q. Disposed of.

A. Disposed of.

Q. To the satisfaction of——?

A. The Union?

Q. Everybody concerned. A. Yes.

Q. I think that's all I have right now.

Mr. Tillman: Just a couple questions.

Q. (By Mr. Tillman) On this square piling when you testified that the 4-inch and the 6-inch stuff was piled in a different location than the larger boards how far apart might those two locations be?

A. Well, they would be quite a ways. I don't know just how big the yards is down there, but I

(Testimony of Henry J. Christophersen.)

would it's possible you could be a quarter of a mile from it.

Q. Now you testified that it would be hard to get a crew that would pile only 4 inches by 6 inches, but didn't the Union and the Company work out a solution as far as unit loading was [340] concerned when they adopted the pool arrangement?

A. Yes, when they adopted the pool arrangement that was all eliminated.

Q. It didn't matter what size board any particular crew piled? A. No.

Mr Tillman: No further questions.

Q. (By Mr. Babcock): Hank, when you were doing the square piling was the lumber when it was brought in, was it piled in a row at one place?

A. One type of lumber was put one place. Another type another, and so on.

Q. Well, was it piled in a row, or was it piled throughout the yard?

A. It was piled through the yard.

Q. Was it piled at the approximate site of where it was to be—I mean, was it dumped by the truck at the approximate site of where it was to be piled?

A. Yes.

Q. Approximately how many truckloads might there be in the yard at one time? I will refer you particularly to the times at which the lumber got piled up and some of it became stained.

A. Well, I wouldn't know exactly how many loads was throughout the entire yard. Some of it was on jacks. Some of it was on jacks for the kiln and things like that.

(Testimony of Henry J. Christophersen.)

Q. I mean the lumber that was in the yard to be piled up in the [341] square piles.

A. Well, when the lumber came in at times they would set it on jacks because they didn't know whether they was going to put it in the kiln or pile it in the yard, and they would drop it at various times you see, that is, part of the lumber was dropped by the trucks that brought it in out in the yard, and part of it was saved on jacks.

Q. Now as to that which was saved on jacks, did the pilers know at the outset what was to be done with the lumber? A. No.

Q. Did you have to wait for instructions on that?

A. Yes.

Q. Now, did you know during that period when any particular load had been brought into the yard?

A. No.

Q. Who was the foreman at that time?

A. Well, Victor Anderson was part of the time, Mr. Redman part of the time.

Q. Well, was there anybody in the position that Parker later held, or was the manager in charge of it?

A. A fellow by the name of Troutman later took that job.

Q. What do you mean later, before or after these incidents when some of the lumber got stained?

A. Well, I might say I think it was maybe, as I can recall here, Troutman took the yard foreman's job about the time it was [342] transferred from unit piling, from square piling to unit piling.

Q. I see, so that then at the time they were doing

(Testimony of Henry J. Christophersen.)

square piling there wasn't any foreman in charge of that work? A. No.

Q. What was the practice followed among the men as to what work they did and the order in which they did it? Did you wait for instructions for each load, or did you follow some other procedure?

A. Well, we didn't generally pile, but we came down in the morning, and if the management would tell us, well, they wanted a kiln piled, well, we would just go over and pile a kiln. That's the way it was. We would stay until we completed that, and then we would start piling in the yard.

Q. Well now, was each team assigned a particular area in the yard to pile, or particular type of lumber to pile, or did you just all work throughout the yard?

A. Well, we generally took turns. Ane day one crew would take the best stuff and the other two would pile other stuff.

Q. How many crews were there at that time?

A. There was three crews.

Q. How was it worked out, among yourselves or——? A. Yes.

Q. Did you have any difficulties among yourselves on that score? A. No.

Q. Did anybody in the crew accuse you of trying to hog the good [343] stuff? A. No.

Q. Did Mr. Redman or anybody else representing the Company at any time tell you, that is, the team that you were working on, to pile a particular load of 4's or 6's? A. No. [344]

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(Testimony of Henry J. Christophersen.)

Q. (By Mr. Stirling) As each load came into the plant wasn't there a ticket on each load with a date on it?

A. There was a ticket and a number on each load, yes.

Q. And with a date on it?

A. Yes, the ticket carried a date.

Q. So that you could go to a load and see on what date that came into the yard, could you not?

A. Yes, we could have.

Q. And in that way you could determine whether or not a particular load was lying unpiled too long, could you not?

A. It could be, yes, you could. [345]

Mr. Stirling: I think that's all.

Trial Examiner Winkler: I have one question.

Mr. Babcock: I have one just to follow up on this.

Trial Examiner Winkler: Were you ever given any instructions which load you were to work on?

The Witness: No.

Trial Examiner Winkler: Mr. Babcock?

Q. (By Mr. Babcock) Were you ever told, instructed that you were to keep track of the dates that those loads came into the yard? A. No.

Q. Or that you were to work on them in the order they came in by date? A. No.

Q. You were not foreman of that yard, were you, Hank?

A. I never knew it, but sometimes now I wonder. [346]

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ALBERT CONGER

a witness called on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [348]

Direct Examination

Q. (By Mr. Tillman) Will you state your full name to the Reporter?

A. Albert Ernest Conger.

Q. Where do you live, Mr. Conger?

A. Redmond, Oregon.

Q. What is your job at the present time?

A. I have none.

Q. Were you ever in the employ of Dant & Russell Company? A. Yes.

Q. When?

A. Up until two weeks ago.

Q. Do you know or recall approximately how long you worked for them up until two weeks ago?

A. Two years.

Q. I would like to direct your attention to 1949 in July when Christophersen and Max Gassner were discharged. At that time, did you hold any position in the Union?

A. As a committee man.

Trial Examiner Winkler: Will you speak up, please?

The Witness: As a committeeman.

Q. (By Mr. Tillman) In your capacity as a committeeman did you attend any grievance meeting with the Company over the discharge of Gassner?

A. Yes.

(Testimony of Albert Conger.)

Q. All right, how many meetings did you attend?

A. At least one.

Q. All right, can you give us the date when that meeting that you attended took place?

A. I would say it was about July——

Trial Examiner Winkler: The discharge took place on July 19; is that correct?

The Witness: It was about three or four days, about three days later, I would say.

Mr. Tillman: July 18th.

Trial Examiner Winkler: July 18th.

Q. (By Mr. Tillman) Where did that meeting take place?

A. At the office of Dant & Russell.

Q. Who was there at the meeting—let's divide them up—let's say who was there representing the Company?

A. For the Company, I would say Parker, Vic. Clark and Bloom for the Company.

Q. And who on behalf of the Grievance committee or the Union?

A. George Brown, Otto Bauer and myself.

Q. Anyone else present besides those named?

A. I don't recall.

Q. Do you know whether or not Henry Christophersen was at that meeting?

A. Henry was at the first meeting. [350]

* * * * *

Trial Examiner Winkler: In other words, the committee for the Union at the first meeting was Bauer, Brown, and Christophersen?

(Testimony of Albert Conger.)

The Witness: That's right.

Q. (By Mr. Tillman): And were the same people, same Company people there? A. Yes.

Q. How did that meeting open?

A. Well, exactly I don't know. It opened over a grievance of Christophersen and Max Gassner.

Q. Yes, now who was spokesman for the Union at that time, if there was any spokesman?

A. Well, I don't recall.

Q. Do you recall who was spokesman for the Company? A. No.

Q. During the course of the meeting did the Company state reasons why they had discharged Max Gassner and Henry Christophersen? A. Yes.

Q. And who made the statement?

A. Parker.

Q. What did Parker say? [352]

A. Because they had not been doing their work.

Q. Did he say when they had not been doing it?

A. Yes.

Q. When?

A. Well, when they were tearing down these piles of lumber out there.

Q. Just before they were discharged, is that the piles you referred to? A. Yes.

Q. Now, did Parker give any other reasons why he had recommended the discharge? A. No.

Q. Did Mr. Clark give any reasons why there had been the discharge?

A. He was not there.

Q. Mr. Clark?

(Testimony of Albert Conger.)

A. Yes, he was at the meeting, but he didn't say anything.

Q. How did the first meeting end? I mean, was anything accomplished, any agreement reached?

A. No.

Q. Now the second meeting which you mentioned you also attended. the second meeting?

A. Yes.

Q. How much later was that, how many days after the first one?

A. I don't recall. There wasn't very many, but I don't recall it. [353]

* * * * *

Trial Examiner Winkler: Were you the same individuals at [354] the second meeting?

The Witness: All but Christophersen.

Q. (By Mr. Tillman): Had anyone else come to that second meeting who was not at the first one?

A. Not that I know of.

Q. Then what was the discussion in that meeting?

A. Oh, the firing of these two men.

Q. Who did the talking for the Company?

A. Well, Parker did some of it, and Mr. Clark did some of it.

Q. At that second meeting did Parker offer any other reasons why Gassner or Christophersen had been discharged? A. No.

Q. What reason did he give at that second meeting?

A. The same as he did at the first, that they had not been doing their job.

(Testimony of Albert Conger.)

Q. Did Clark give any reasons at that second meeting? A. No.

Q. Did Clark say anything at the second meeting?

A. Yes, he spokeup, he said, "These men under me are, when I am gone," he said, "they are to take my place."

Q. What men did he mean? Did he name them?

A. Parker and Bloom

Q. Did he say anything else?

A. That's all.

Q. Was there any discussion—going back to the first meeting [355] where Christophersen was present, was there any discussion of the amount of lumber the men had loaded out in the three days they worked?

A. No.

Q. How about at the second meeting; do you recall whether the Union or the Company discussed the amount of lumber loaded out?

A. They said they should have did more work than they did.

Q. Was there any mention of the number of board feet that they done? A. No.

Q. Going to another subject now, before Max Gassner and Henry Christophersen were discharged did you hear any statements from any Company officials which might indicate that they were going to be fired? A. Yes.

Q. Which Company official did you hear make such a statement? A. Parker.

Q. How many times did you hear him make such a statement?

(Testimony of Albert Conger.)

A. I would say three or four times.

Q. When was it, approximately, about the first time that you heard the statement?

A. Oh, I would say around July 12th or 13th, 14th, somewhere along in there.

Q. I am going to show you a calendar for 1949. There is the month of July. I think you are entitled to know that the [356] evidence shows that these men were working on July 13, 14th and 15th, Wednesday, Thursday and Friday. Now, with relation to those three days, when was the first time that you heard Parker make any statement?

A. Oh, I would say the 11th then.

Q. On the 11th? A. On the 11th.

Q. Where was he when he made that statement?

A. In the garage.

Q. Who was there at the time?

A. Well, I wouldn't exactly tell you because I don't know, but there is always a bunch of fellows come back from dinner, and they eat in there.

Q. What was the conversation, or what was the statement you overheard there?

A. That Bob would give him $25.

Trial Examiner Winkler: Who is Bob?

The Witness: Mr. Dant.

Trial Examiner Winkler: Mr. Dant.

The Witness: If they would get rid of them, and he would bet 50 that they couldn't.

Q. (By Mr. Tillman): Get rid of who?

A. Max Gassner and Hank Christophersen.

Trial Examiner Winkler: So I get this straight,

(Testimony of Albert Conger.)

Parker stated at that time that Bob, Mr. Dant, had told Mr. Parker that [357] he would give Mr. Parker——

The Witness: This is according to Mr. Parker's statement.

Trial Examiner Winkler: Yes, Parker said that Mr. Dant would give him 25?

The Witness: He would bet 25, and he would give him 50 if they could get rid of them.

Q. (By Mr. Tillman): That particular statement, did you ever hear it again? A. Yes.

Q. And when was the next time?

A. In the coke shack.

Q. About how many days later?

A. The next day, the 12th.

Q. Who was there at that time?

A. There was too many in there to state: I wouldn't state anybody's name.

Trial Examiner Winkler: In other words, there was just other employees present at the time?

The Witness: Yes.

Q. (By Mr. Tillman): What was the statement at that time? A. Same one.

Q. Now after hearing that statement twice did you hear Parker make any other statement that might indicate he was going to——?

A. I did not. [358]

* * * * *

Q. When you were working for the Company, Albert, what was your job?

A. Carrier driver.

(Testimony of Albert Conger.)

Q. A carrier driver, and what is the function of a carrier driver?

A. Well, when somebody loads a load he took it away from, or would haul it into the planer, molder, wherever it's supposed to go.

Q. Now in any given day are you running all over the place?

A. In any given day you go any place.

Q. Have you had occasion to haul loads away from men who were dry loading?

A. That's right, a lot of days.

Q. And have you observed the amount of lumber that has been dry loaded by men on those occasions?

A. Yes.

Q. What, in your opinion, would be a normal or a common day's work for dry loaders on any given day, assuming normal lumber?

A. I would say not over 22,000, not over that.

Q. Not over 22. Is that for the men or for the team?

A. For the team for dry loading.

Q. That will be all.

Trial Examiner Winkler: Mr. Babcock?

Examination by Mr. Babcock:

Q. Albert, did you haul lumber that Max and Hank were loading on these three days in July?

A. I did not.

Q. You didn't haul that lumber? A. No.

Q. Did you observe the work they did there that day? A. I did.

Q. Did you know what lumber there was there?

(Testimony of Albert Conger.)

A. Yes.

Q. Do you know how many piles there were?

A. Yes.

Q. How many were there? A. Three.

Q. Were those all full piles?

A. No, one was about a half.

Q. One obout a half? [360]

A. Well, there was three and about a half.

Q. Three and a half or three less a half?

A. Three less a half.

Q. Had you ever been—before this had you observed any other crews working at day labor on any of these piles? A. That's right.

Q. I don't mean these particular piles.

A. No.

Q. But I mean the square piles. In your opinion——

Trial Examiner Winkler: You mean day labor?

Q. Day labor, in your opinion, did Max and Hank do as much work on these days as was done on the average by other men working at that kind of work?

A. By other crews.

Q. That's all.

Trial Examiner Winkler: Mr. Stirling?

Cross Examination

Q. (By Mr. Stirling): Did you see these men at Dant—at those piles from time to time during those three days? A. Yes.

Q. And did you observe whether they were working steadily or not?

A. I didn't pay no attention.

(Testimony of Albert Conger.)

Q. Didn't pay no attention?

A. I wasn't interested. [361]

Q. Well, how were you able to testify that they had done a normal amount of work then?

A. Well, at the end of the day I saw how much they tore down.

Q. Oh, you are judging by what you say they tore down? A. Yes, sir.

Q. Not by what you saw of them?

A. That's right.

Q. You have said that you had observed their work. A. I saw them working when I went by.

Q. You saw them working?

A. That right.

Q. Did you see them doing any loafing?

A. I did not—I did early in the morning because they didn't have aprons to work with.

Q. Did I understand you to say you were not picking up their piles?

A. No, sir, that is correct.

Q. Did you have occasion to say anything to Parker about Gassner and Christophersen on any one of those three days? A. I may have.

Q. Do you recall what you may have said?

A. I don't know what I said.

Q. Didn't you ask Parker something to the effect about, "Able to get away with it?"

A. I don't recall that statement. [362]

Q. Well, you say you do recall talking to him?

A. I don't recall that statement.

Q. You do recall talking to him?

(Testimony of Albert Conger.)

A. That's right.

Q. About them? A. Yes.

Q. Do you recall the sum and substance of your conversation with him about them? A. No.

Q. You don't recall anything about it other than the fact that you did talk about them?

A. I don't even know if I talked about them. I don't even recall it.

Mr. Babcock: He said he may have talked with Parker. He never said he did talk with him.

The Witness: I don't recall the statement or talking.

Q. (By Mr. Stirling): Now you said that on the 11th you heard Parker make a statement about them?

A. That's correct.

Q. Now do you understand the 11th as being this day that they were doing this dry loading?

A. The 11th is Monday?

Q. Yes.

A. They was not dry loading on Monday.

Q. That's right. [363]

A. All right, they started on Wednesday.

Q. That's right.

A. Which is a couple days later.

Q. That's right.

A. They didn't start on the 11th.

Q. No, they started on the 13th.

A. O.K.

Q. Well now, who else was present when these statements were made?

A. What statements?

(Testimony of Albert Conger.)

Q. These statements that you told about in your direct examination.

A. I didn't know I told one. You have not told me yet.

Q. Well, you said Parker had made a statement on the 11th and another one on the 12th.

A. I don't recall the 11th.

Q. You don't recall the 11th

A. Which was Monday. What statement are you talking about?

Q. Well, in your direct examination you said that on the 11th Parker had made a statement.

A. Can you show me a piece of paper that says the 11th?

Q. Well——

Trial Examiner Winkler: Do you remember testifying to some statement that Parker was repeating some statement that Mr. Dant had—— [364]

The Witness: I know, I didn't tell him on the 11th.

Q. (By Mr. Stirling): Do you meant it's a different date for me than for them?

Trial Examiner Winkler: I don't want to argue with the witness. Can you tell us when the first statement was made, if you know? Here is a calendar.

The Witness: I don't need a calendar. I know when it was. I would say the middle of the week before which would be in June.

Q. (By Mr. Stirling): Then it was not on the 11th?

A. Not the first one.

(Testimony of Albert Conger.)

Q. And then where was this statement made that is supposed——? A. In the garage.

Q. Who was present?

A. Well, I am not giving any names out but there was a lot of people there because there always is. There is guys coming and going.

Q. Can't you name any of those present?

A. I don't want to get them involved. There is enough here now.

Mr. Stirling: Mr. Examiner, as I understand it, when a question is asked and the witness refuses to testify——

The Witness: I can't remember then.

Mr. Stirling: He is subject to having all his testimony stricken. Now he has changed his answer, of course, now, but his first answer was that he wouldn't reply because he didn't [365] want to get anybody in trouble.

The Witness: I can't remember. I don't know who was.

Trial Examiner Winkler: Mr. Conger, let me just tell you this. So far as I am concerned, I am just the Trial Examiner here, and I can't file charges, can't issue complaints. However, if any man is prejudiced as a result of what happens at this proceeding, whether it be a witness or somebody else, somebody's name you mentioned, to the full extent of my ability I will see that anybody is prosecuted if he is responsible for it. I want you to keep that in mind. In other words, I will protect you, and I will protect every man that testifies.

(Testimony of Albert Conger.)

The Witness: That's fine.

Trial Examiner Winkler: Now to the extent you were able, to the best of your recollection, who was present at that time?

The Witness: I can't remember.

Q. (By Mr. Stirling): Why do you say now that you can't remember and in your first answer you say that you don't want to get anybody in trouble and you know that there were a number of men there?

A. I can't remember.

Q. You realize that you are under oath?

A. That's right.

Q. And sworn to tell the truth?

A. That's right.

Trial Examiner Winkler: May I suggest this. It might [366] be a little out of the way, I don't know, I think Mr. Parker when he testified testified to having made statements, something to the effect that Mr. Conger in fact testified to. Maybe his recollection might be a little more clear than the witness's.

Mr. Stirling: Well, of course, Mr. Conger's statement of what Mr. Parker said was, as I understood it, quite a bit different from what Mr. Parker said.

Trial Examiner Winkler: I recognize the substantial deficiencies, yet I would presume everything might relate to the same incident.

Mr. Stirling: I see no reason why a witness should be permitted to give one answer that there were men there and he does not want to give their names because he doesn't want to get anybody in trouble.

The Witness: I can't remember any of them.

(Testimony of Albert Conger.)

Mr. Tillman: I submit that the answer was not necessarily contradictory. He did testify that he wouldn't give names. He might not know the names, and if he didn't know the names he might want to protect them.

Trial Examiner Winkler: Well, continue with the examination.

Q. (By Mr. Stirling): Now, as I understand it, you stated that Mr. Parker made a similar statement later. Where was that made? You said in your direct testimony that it was made on the 12th. Is that so, was that made on the 12th [367]

A. I don't know what statement you are talking about.

Q. I am talking about the second statement that you say he made.

A. I don't even recollect the first one. What was the statement?

Trial Examiner Winkler: Mr. Conger, please try to co-operate with counsel. We are trying to get at the facts. We are talking about this statement that Parker is supposed to have made, about a statement that Mr. Dant made to him about the bet of $25 and $50.

The Witness: That's correct, and I remember it, too.

Trial Examiner Winkler: You remember that?

The Witness: Yes.

Trial Examiner Winkler: Now you testified that Parker made the statement on several occasions. The first occasion was sometime in June before the dis-

(Testimony of Albert Conger.)

charge, the discharge being in July; that that correct?

The Witness: That is correct.

Trial Examiner Winkler: Now Mr. Stirling would like to know when the second similar statement was made.

The Witness: I would say probably the 15th of July in the garage of Dant & Russell.

Q. (By Mr. Stirling): In the garage?

A. That's right.

Q. Do you recall who was present then?

A. I do not.

Q. Do you recall how many were present, approximately how many? [368]

A. I do not.

Q. Was Parker talking to you?

A. I would say to a group.

* * * * *

Q. You said that you saw the piles that they worked on, and, in one of your statements, that there were about three piles.

A. That's correct. [369]

Q. And then you amended that by saying "And another half pile," and then Mr Babcock asked you a question, "You mean another half or less half?"

A. I think there was about three.

Q. Were there three and a half piles or——?

A. I think there was about three, to my recollection.

Q. About three piles? A. That's right.

Q. About three? A. That is correct.

(Testimony of Albert Conger.)

Q. Then there could have been three and a half or two and a half; is that right?

A. No, there was at least three.

Q. At least three? A. That's right.

Examination by Mr. Tillman:

Q. What is this coke shack that you mentioned?

A. Coke shack?

Q. Coke shack.

A. That's where you get a 10 minute break in the morning and afternoon to go and smoke.

Q. Does that adjoin the garage?

A. No, it does not. It's by the molding plant. [370]

Mr. Tillman: I have no other questions.

Examination by Mr. Babcock:

Q. Albert, it's not entirely clear to me as to the exact sequence of these occasions when you heard Mr. Parker make this statement about the bet on getting rid of Max and Hank. How many were there altogether times that you heard it?

A. Well, I could not say.

Q. You testified about——

A. They was always gathering in the garage, and I would say there was from three to five in there.

Q. No, I mean how many times did you hear the statement or a similar statement from Mr. Parker?

A. Oh, I would say at least six or eight times.

Q. You stated that two of them were in the garage and one was in the coke shack.

A. That is correct.

(Testimony of Albert Conger.)

Q. Now, which one was in the coke shack, from the standpoint of time?

A. I don't understand your statement.

Q. Well, from the standpoint of time sequence was it the first or last or one in between when you heard it in the coke shack?

A. I imagine it was in between.

Q. And the time in the garage on the 15th of July, which was the last day they worked, on a Friday, which occasion was that from the standpoint of time: would that have been the last time? [371]

A. I think that's the last time.

Q. That's the last time? A. Yes, sir.

Q. Do you remember about when it was that you heard it in the coke shack?

A. No, I couldn't recall it, might be a day or two before.

Q. Day or two before that, and then in the garage?

A. Well, that was before that.

Q. Before that. I think that's all.

Re-Cross Examination

Q. (By Mr. Stirling): Mr. Conger, did you understand those remarks by Mr. Parker to have been made in a joking way or in a serious way?

A. It didn't sound joking to me.

Q. Do you know what the occasion was for him making them? A. No, I do not.

Q. Didn't it arouse your curiosity as to why he would come out with such a statement as that?

(Testimony of Albert Conger.)

A. I just work there. I am not a foreman. It didn't make no difference to me.

Q. Why do you think such a statement was made?

A. Because I heard it.

Q. No, I say why do you think Parker made such a statement as you say he made?

A. Because I heard it. [372]

* * * * *

GEORGE BROWN

a witness called on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination [373]

Q. (By Mr. Tillman): Where do you live, George? A. Redmond, Oregon.

Q. What is your occupation at the present time?

A. At the present time millwright.

Q. For what company?

A. Dant & Russell.

Q. How long have you been employed at Dant & Russell? A. About three years.

Q. Have you held any other positions besides millwright out there?

A. Lift truck driver, ripsaw, bunk, re-saw operator, bull on the chain, I don't know, a few others.

Q. And those positions that you enumerated last, where did you work, in the planing mill or in the molding plant?

A. Well, I guess you would say the resaw and the ripsaw, one of the resaws was in the molding

(Testimony of George Brown.)

plant. One of them was on the dock. I would say it was in connection with the old planer.

Q. Did you have any position in the Union in 1949 at the time of these discharges?

A. Yes, I believe I was chairman at that time.

Q. Chairman of what?

A. Chairman of the sub-local I guess you would call it.

Q. Sub-local? A. Yes

Q. That is, the sub-local was confined to the Dant & Russell [374] employees?

A. That's right.

Q. As chairman of the sub-local were you a member of the standing committee? A. Well, yes.

Q. Did you attend any meetings with the standing committee when they went to grieve over the discharge of Max Gassner and Henry Christophersen?

A. I was there.

Q. How many meetings did you attend?

A. Two.

Q. Do you recall about when the first one took place?

A. I would say a few days after the discharge. I would not try to name the time, the date, I mean.

Q. Was it the same week?

A. Well, in any event, it was a few days after the discharge. It was a few days afterwards. I wouldn't try to fix the time on it.

Q. Where did that first meeting take place?

A. In the Company office.

Q. Who was there representing the Union?

(Testimony of George Brown.)

A. I believe Conger, Christophersen, myself, as I remember, Otto Bauer. That's as I remember.

Q. You are not sure?

A. I am not sure. [375]

Q. But he might have been. Do you recall anyone else that might have been representing the Union?

A. I believe Fordham was there. I am not sure of that.

Trial Examiner Winkler: What is Fordham, a union organizer?

The Witness: Well, he is Business Agent.

Q. (By Mr. Tillman): Who was there representing the Company at that first meeting?

A. As I remember, it was Mr. Clark and Mr. Parker only.

Q. When the committee went in did they go in as a group? A. That's right.

Q. Did you have any spokesman selected to speak for the committee?

A. No, I believe Fordham done most of the talking.

Q. And in response to the position set forth by the Union who seemed to talk for the Company?

A. Oh, I don't know, I would say probably Parker did most.

Q. In the course of the discussion of the grievance did Parker take any position as to why the men had been discharged?

A. They had not done a day's work.

Q. And did he say so, they had not done a day's work?

(Testimony of George Brown.)

A. As I remember he did, yes. He stated the three days.

Q. Three days just prior to their discharge?

A. Yes.

Q. Did Parker have any other reason why they had been discharged? [376]

A. I don't recall. I don't know, if there was one I don't remember it.

Q. Did he say anything about insubordination?

A. I don't remember that he did at that particular meeting. He may have——

Trial Examiner Winkler: Well, to the extent that you can remember.

The Witness: That's right, to the extent that I can remember, I don't remember him saying anything about it.

Trial Examiner Winkler: That's what we want.

Q. (By Mr. Tillman): How about Clark; do you remember whether he took any position as to why there had been a discharge?

A. I don't remember him actually saying why they were discharged, anything like that, no.

Q. Do you recall any statements by Clark at that meeting?

A. Well, yes, at the first meeting Mr. Clark said that when he was away the responsibility was on Parker and Mr. Bloom.

Q. How did the subject happen to come up as to who had the responsibility?

A. I don't remember.

Q. Do you recall whether or not there was any discussion of the number of board feet that had been

(Testimony of George Brown.)

loaded up in those three days at that first meeting?

A. As I remember, that was discussed, yes.

Q. Did the Company take any position on how much had been loaded [377] out?

A. Well, after talking back and forth I believe they settled on 50,000, somewhere thereabouts.

Q. Now who settled on it?

A. The Union and the Company also, as I understood it.

Q. There was a mutual agreement that 50,000 was what had been done? A. That's right.

Q. After that first meeting—well, during that first meeting—strike that—as a result of that first meeting did the Company offer to take the men back?

A. No.

Q. When did the second meeting occur?

A. I can't remember dates. I don't know, it was a few days later.

Q. You don't have to remember dates.

Trial Examiner Winkler: A few days after the first meeting?

The Witness: That's right.

Q. (By Mr. Tillman): Where did that take place? A. In the office.

Q. Same place as the first one?

A. Same place.

Q. Who was there on behalf of the Union?

A. I believe Mr. Sullivan and Mr. Fordham, Otto Bauer, Red [378] Conger and myself.

Q. And yourself. Now who is Sullivan?

A. District president.

(Testimony of George Brown.)

Q. And who was there on behalf of the Company?

A. I believe there was Mr. Bloom, Mr. Clark, and Mr. Parker.

Q. Now what, in general, what took place at that second meeting?

A. Well, same thing that took place at the first one.

Q. By that do you mean that the Union tried to get the men back, and the Company didn't want them back? A. That's right.

Q. Was there any further discussion of the reasons why the men had been discharged?

A. Not that I remember.

Q. Did Parker give any reasons at that second meeting why they had been discharged?

A. Other than the same reason, I don't remember any other reason.

Q. Did Mr. Clark?

A. No, I can't remember of any specific thing now.

Q. Did Mr. Bloom? A. No.

Q. Did Mr. Bloom take any part in the second meeting?

A. Yes, I would say a small amount.

Q. Do you remember what was the extent of his part?

A. No, I mean, as far as the subject, I can't tell you.

Q. Now before these two men were fired did you hear any statement [379] from any management representative that might have, or that led you to think

(Testimony of George Brown.)

they were going to be fired? A. Yes.

Q. How many times did you hear such a statement?

Trial Examiner Winkler: By whom, first I would like to identify this. Who made the statement?

The Witness: Parker.

Q. (By Mr. Tillman): How many occasions did you hear Parker make any statements?

A. I believe I only heard it once.

Q. Where was that? A. In the garage.

Q. What time or when?

A. Just before we went back to work at dinner time.

Q. On the point of the calendar, well, in relation to when the men were fired when was it?

A. The second day they worked.

Q. In other words, the second day they were on dry loading? A. That's right.

Q. That would be a Thursday. Do you recall who was present in the garage?

A. I wouldn't try to name anybody, no, because I am not sure I would know.

Q. Was there a number of people there?

A. Eight or nine. [380]

Q. To the extent you know, were they employees?

A. Yes, I believe they all were. I mean, I didn't see any other.

Q. What was the statement that he made?

A. He just said as far as he was concerned there was a couple of men going to get some pink slips.

Q. Did he indicate in his statement who was going to get the pink slips?

(Testimony of George Brown.)

A. No, I wouldn't say that he did, no, and I probably took it for granted.

Q. What did you take for granted?

A. That it would be two men on the piling.

Q. What was there that led you to think two men on the piling were dismissed?

A. There had been talk around the day before that day, that morning.

Q. Talk by whom? A. Everybody.

Q. Any talk by Parker?

A. I hadn't heard him say anything, no.

Q. Anyone else to get pink slips besides the two pilers at that time? A. At that time, no.

Q. At any time did you hear Parker make any statement about $25? [381] A. No.

Mr. Tillman: No other questions.

Trial Examiner Winkler: Mr. Babcock?

Mr. Babcock: No questions.

Trial Examiner Winkler: Mr. Stirling?

Cross Examination

Q. (By Mr. Stirling): What did you mean by "there was talk around on the part of everybody."

A. Well, I would say on the part of everybody, everyone you would talk to, or somewhere around the plant I heard talk. I wouldn't say everyone I talked to, no, it must have been on my mind. There was people in the plant talking about it. I wouldn't try to say who.

Q. Talking about what?

A. Two men getting pink slips.

Q. What was said about it; do you recall?

(Testimony of George Brown.)

A. I couldn't say.

Q. Was there anything said about why?

A. When I said "talk around" I meant, I had it in my mind there must have been some talk about it. It seems to me there was. Now why or what they said I can't tell you because I don't know.

Q. Who was talking around about the amount of work these men were doing those three days?

A. I didn't say I heard somebody say something about it. I [382] couldn't, no.

Q. What did you hear them say about it?

A. Just like I told you, I don't know.

Q. Now was there still another meeting, a third meeting in regard to the discharge?

A. If so, I don't remember.

Q. Do you recall a meeting at which the U. S. Conciliation men appeared?

A. I believe that was at the second meeting.

Q. You think he was at the second meeting?

A. I believe that was the the second meeting.

Q. Do you recall whether or not, do you recall his name? A. No, I don't.

Q. Do you recall whether or not the attorney for the Company was present at that meeting, Mr. Meinke? A. Yes, he was.

Q. Well then, it was at the second meeting that the meeting was held in the presence of a U. S. Conciliation Service man?

A. It must have been. He has slipped my mind. I don't remember him again any more.

Q. Would you recall his name if you had heard it?

A. I don't believe I would.

(Testimony of George Brown.)

Q. There wasn't a definite disposition of the grievance matter at that meeting?

A. I don't understand that question. [383]

Q. There wasn't a decision reached between the Union and the Company as to whether or not the discharges were warranted?

A. So far as I know, they didn't agree on anything.

Q. You were a lift truck operator at one time?

A. That's right.

Q. And the lift truck driver picks up piles of lumber; is that right? A. That's right.

Q. For how long a period were you a lift truck diver?

A. Possibly eight months.

Q. Did you learn to observe piling, that is, whether it was good or whether it was bad?

A. Yes, I would say I would.

Q. Could you even go so far as to identify piles as to certain pilers?

A. In my own mind, yes.

Q. How could you know one pile piled by, the one pile was piled by one or both and another pile piled by another?

A. I wouldn't say I could tell that one pile was piled by a certain piler and another by another. You asked me if I could identify loads, I believe.

Q. That's what I meant by my question.

A. In my own mind I could tell, I thought I could tell that one pile was piled by one and one by another, yes.

(Testimony of George Brown.)

Q. (By Mr. Babcock): Individuals or by teams?

A. Teams.

Q. (By Mr. Stirling): And did you have occasion to pick up on your carrier piles that were piled by Christophersen or Gassner? A. Both.

Trial Examiner Winkler: You mean by teams of which Christophersen and Gassner were a member?

Mr. Stirling: Yes.

Q. (By Mr. Stirling): And would you have occasion to observe whether the pile done by Christophersen and Gassner or Gassner was good or bad?

A. I will say that some of it was better than others.

Trial Examiner Winkler: I didn't get the answer.

(Last answer read by the Reporter.)

Trial Examiner Winkler: By "others" you mean that some of their piles were better than others would pile their piles or that some of their piles were better than the work of other teams?

The Witness: I would say some of the loads I handled were better than other loads.

Trial Examiner Winkler: It is still not clear.

Q. (By Mr. Stirling): Do you mean that some of the piles that you picked up were piled better than other piles; is that what you mean?

A. That's right.

Q. When you say that some were piled better than others do you [385] mean that some would have the stickers placed straight and some would not?

A. I may have made a mistake there. When they

(Testimony of George Brown.)

reached me some of them were better than others, let's put it that way.

Q. When they reached you? A. Yes.

Q. Now do I understand that in your job as a lift truck driver you picked up the piles or loads right after they were piled? A. No.

Q. In other words, they were picked up by a carrier first? A. Yes.

Q. And yet in your opinion you could tell whether the piles had been piled properly or whether they had been piled good or bad?

A. In my opinion, yes.

Q. And some were good and some were bad?

A. That's right.

Q. During that period of your work as a lift truck driver Christophersen and Gassner were piling most of that time, were they?

A. So far as I know, yes, they were. [386]

* * * * *

Q. Well, in your work as a lift truck driver did you have occasion to observe the work of Christophersen and Gassner?

A. I would say no, very seldom if I ever done it.

Q. Would you handle piles that they had piled?

A. That's right.

Q. So you would observe the piles that they had piled, would you not? A. That's right.

Trial Examiner Winkler: You mean observe them after they had been conveyed to the witness by carriers? The Witness: That's right.

Q. (By Mr. Stirling): Ordinarily, is there much,

(Testimony of George Brown.)

if any, change in the position of the piles or the condition of the piles between the time it's piled and the time it reaches you? [387]

A. It takes a lot of explanation.

Trial Examiner Winkler: May I ask this. How would this witness know whose pile it is?

Mr. Stirling: Well, he has said, he has indicated that he could identify them, as I understood him.

Trial Examiner Winkler: I would like to have the witness tell me at least how he was able to identify it if he didn't pick up the load itself but merely picked up a load that had been carried. Now how would he know that it belongs to A, B, or C?

The Witness: Because one group piles better piling than another group, mainly.

Q. (By Mr. Stirling): And would a pile piled by Christophersen and a partner not be as good as a pile piled by a team of other partners?

Mr. Babcock: Let's name people if we are going into this, if we are going to go into this.

Mr. Tillman: Let's name partners.

Trial Examiner Winkler: What is the objection?

Mr. Babcock: I think it's putting a question to the witness that will have no meaning unless we can specify names. Let's find out how many times this man, when this man was on this carrier, and specify specific teams.

Trial Examiner Winkler: It might no only be necessary to name names but the nature of the question itself that [388] Christophersen and Gassner and their partners have at any time did worse work than

(Testimony of George Brown.)

others, anybody, but let's assume they have. It doesn't prove anything to me, and they may have done worse work at one time and better at one time. Assuming you get an answer from the witness, it doesn't prove a point, in my opinion, unless you are prepared to go forward with it. Also, I will sustain the objection.

Mr. Stirling: Do I understand that by your statement that if this man were to say that Gassner and Christophersen piled worse piles than somebody else that that is of no——?

Trial Examiner Winkler: Maybe I misunderstood you, sir. I thought the question was whether he had, had ever—— let's ask the Reporter to read the question.

(Pending question read by the Reporter.)

Trial Examiner Winkler: I will sustain the objection on the ground—— I will sustain the objection.

* * * * *

Q. (By Mr. Stirling): In you observation of the piles is it possible for one end of the pile to be piled badly and the other end good?

A. Well, I have seen loads like that, yes. I don't know whethey they were piled that way or not. I didn't see them piled.

Q. You have seen loads that way? Have you seen loads that way that were piled by either Gassner or Christophersen?

Mr. Tillman: I will object to the questtion as having no relevancy. It proves nothing.

(Testimony of George Brown.)

Trial Examiner Winkler: Overruled. Read the question.

Mr. Babcock: A further objection, there is no proper foundation for it. The witness has already said that he has seen loads that way and he didn't know how they came to be that way.

Mr. Stirling: The objection has already been overruled.

Mr. Babcock: This is a new ground. I am making an objection.

Trial Examiner Winkler: I will permit the question; however, I will advise counsel that unless it's properly qualified by subsequent testimony I don't know how much probative [391] value it has.

(Pending question read by the Reporter.)

Trial Examiner Winkler: By that you mean a team of which either Gassner or Christophersen was a member?

Mr. Stirling: Perhaps the question prior to that should be read in connection with it.

(Question referred to read by the Reporter.)

Trial Examiner Winkler: All right, do you have it; is that it?

The Witness: I imagine they were piled by either, both, or somebody else was down there. There was lots of loads that way.

Trial Examiner Winkler: All right, were you able to identify any such pile as being piled by either Christophersen or Gassner?

The Witness: To say I could look at the pile and

(Testimony of George Brown.)

say, "Max piled this," or "Christophersen piled that," no.

Q. (By Mr. Stirling): Did you hear any, during your employment there, did you hear any complaints by Parker with respect to the work of Gassner and Christophersen?

Mr. Tillman: Now I object to that again as having no materiality. If Parker has gone around making complaints not in the presence of these pilers, I don't see where——

Trial Examiner Winkler: Objection overruled.

The Witness: What did he say? [392]

(Last question read by the Reporter.)

The Witness: Yes, but not as Christophersen and Gassner themselves, as to the pilers which included them.

Q. (By Mr. Stirling): Did you hear quite a few or ——?

A. What would you call quite a few?

Mr. Babcock: Objected to as immaterial anyhow. You certainly can't justify the discharge of these men on the poor work of pilers as a group.

Trial Examiner Winkler: The witness has testified about statements about pilers generally. I don't know what the relevancy is as to the discharges here.

Q. (By Mr. Stirling): Have you heard any comments from the other employees regarding the quality of the work of Gassner and Christophersen?

Mr. Tillman: Objected to as immaterial, irrelevant.

Trial Examiner Winkler: Overruled.

(Testimony of George Brown.)

The Witness: By any other employees? Not that I remember, no.

Q. (By Mr. Stirling): Have you heard any complaints from Mr. Clark with respect to the work of Gassner and Christophersen?

Mr. Tillman: Same objection.

Trial Examiner Winkler: Overruled.

The Witness: I don't remember his saying anything that I could say.

Q. (By Mr. Stirling): Have you heard any complaint from Mr. Dant [393] with respect to the work of Gassner and Christophersen?

Mr. Tillman: Same objection.

Trial Examiner Winkler: Overruled.

The Witness: No.

Q. (By Mr. Stirling): Now these complaints that you heard from Parker, over what period of time did you hear those complaints? In other words, when was the earliest complaint heard?

Mr. Tillman: I want to enter a continuing objection to all questions pertaining to Parker's complaining to this witness or in his presence.

Mr. Babcock: I want to make one further objection, that that question assumes that there were complaints by Parker; whereas, the only testimony we have is comments he made about the work of the pilers as a whole, and further questions along that line were ruled out. He made no statements of any complaints because of these particular individuals.

Trial Examiner Winkler: Have you heard Mr.

(Testimony of George Brown.)

Parker make any complaints or criticism of the work of Gassner and Christophersen?

The Witness: Do you mean did I ever hear him say that so and so isn't doing his work right?

The Examiner Winkler: Yes.

Mr. Babcock: I take it you mean prior to the discharge of these men?

Trial Examiner Winkler: Yes. [394]

The Witness: I can't say that I ever heard him mention either one's name and say—I mean, I have heard him say "pilers" but I had never heard him mention either one's name that I remember of.

Mr. Stirling: I have no further questions.

Mr. Tillman: Just a couple.

Q. (By Mr. Tillman): In your job as a lift truck driver you have testified that you picked up a load which had been previously hauled by carrier from the pilers. Is it possible, or does it happen, and have you noticed whether transportation by a carrier may disturb a pile in such a way that one end may be spilled or thrown out of kilter while the other end remains in proper position?

A. If the stickers were long, something like that, yes, or it would bump, it could happen.

Q. If the stickers were long how would it happen?

A. They would catch on the carrier.

Q. The carrier would be too narrow to straddle the stickers? A. That's right.

Q. Could stickers become ajar merely from the transportation itself without hitting the stickers?

(Testimony of George Brown.)

A. Possibly on the three or four bottom courses, five.

Q. How would that occur?

A. Because the weight of picking it up by the middle and the weight of the boards themselves and will be loose on the first [395] few courses on the bottom on each end, not in the middle.

Q. When you get to the job, your job with the lift truck driving, is it also possible that delivery by the lift truck might result in disturbing the stickers?

A. If you haul it very far, yes.

Q. How far, how would that result?

A. By the same thing, picked up by the middle, both ends are loose.

Q. Could it also result by depositing the load in an improper manner?

A. Oh, I suppose if you ran into something it would move.

Q. Do you know whether any carrier drivers had been reprimanded for disturbing loads, or I mean, carrying loads improperly?

A. Not that I know of.

Q. How about lift truck drivers?

A. Yes.

Q. Who do you know that has been reprimanded?

A. Me.

Trial Examiner Winkler: When?

The Witness: Well, I wouldn't try to state a date on it.

Trial Examiner Winkler: Was it before or after the discharges?

(Testimony of George Brown.)

The Witness: Before.

Q. (By Mr. Tillman): What had you done that was reprimanded? [396]

A. Well, the only particular time I remember I spilled a load.

* * * * *

Trial Examiner Winkler: When Parker made the statement in the garage did he identify the two men who were going to get pink slips?

The Witness: No: [399]

* * * * *

OTTO BAUER

a witness called on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Tillman): What is your name?

A. Otto Bauer.

Q. Where do you live?

A. 232 Fifth Street, Redmond, Oregon.

Q. Otto, what is your occupation?

A. At the present time?

Q. Yes. A. Driving carrier.

Q. For whom do you work?

A. Dant & Russell.

Q. How long have you been employed by Dant & Russell?

A. I went to work in 1945 the first time, and then I quit some time in 1946, and then I went back to work in September, 1947.

Q. Your employment has been steady then since

(Testimony of Otto Bauer.)

September, 1947? A. Yes.

Q. What occupation or what job title did you have at the time that Max Gassner and Christophersen were discharged?

A. I was temporary crew out there, out in the yard piling.

Q. Is that the same thing as spare crew?

A. Spare crew.

Q. Who was your partner at the time that the two men were [400] discharged?

A. Les Shellhorn.

Q. How many regular teams were there in addition, not in addition, but how many regular teams were there?

A. Well, at the time they were getting—— at the time there was only two regular crews.

Q. Would you name the two crews?

A. Slim Erickson and Max Gassner was one, and Christophersen and Mike Gassner was the other one.

* * * * *

Q. Well then, off and on from the spring of 1948 you did piling, and then you did off jobs; is that right?

A. Well, we piled then until, well, there was a lack of lumber at the time then, and so I went to trimming in the new planer, and then I went to loading car on contract.

Q. All of this time did you have the same partner on piling?

A. Well, no, all the time we piled out in the yard but not loading cars.

(Testimony of Otto Bauer.)

Q. Not when you were loading cars. Now you had been in attendance at part of this hearing, have you not? A. Yes.

Q. Have you heard reference to the piles that Max and Henry piled just before they were discharged? A. Yes.

Q. Did you work on those same piles at any one time? A. Yes.

Q. Can you remember approximately when you worked on them? [402]

A. At some time before dinner me and Les had a few loads to clean up. I think it was on Tuesday. We cleaned up a few loads, and then we went and had a coke, and so we went out to tear down lumber off those piles, and I think before dinner we got on carrier load and just about another one.

Q. And what happened to that carrier load that you didn't quite finish?

A. It was left there.

Q. On the ground or on the bunks or whatever they were? A. Yes.

Q. This Tuesday you mentioned, was that the same week that Max and Hank came back to work?

A. Yes.

Q. Who assigned you the work of tearing down those particular piles? A. Floyd Parker.

Q. Did he give you any instructions when he assigned you to that work? A. No.

Q. Well——

A. He just said, "Go down and tear down them three piles that are left over there."

(Testimony of Otto Bauer.)

Q. When you got over there how many piles were there left?

A. There was three piles.

Q. After you got through your working on the piles, loading [403] out your almost two loads, how many piles were left?

A. Well, we loaded from off of that one pile I would assume somewhere in the neighborhood of 900 feet of that lumber they had that was stacked there. It was all wedge shaped. You couldn't get any scale on the load to start with. I don't know, approximately 2,000 feet, from 2,000 to 1,800, something like that.

Q. That's how much your team loaded?

A. That's what me and Les loaded, somewheres around that neighborhood.

Q. Then did that 2,000 or so knock this one pile down to below half, below the half way mark?

A. No, I would say it didn't.

Trial Examiner Winkler: How many piles were there to start with?

The Witness: Three.

Q. (By Mr. Tillman): So you got through more than two and a half piles there?

A. I would say there was probably two-thirds of that pile left, somewheres in that neighborhood of that.

Q. How come you stopped working on the piles and didn't finish?

A. I don't recall what they did in the afternoon. I think there was some more lumber come in. I

(Testimony of Otto Bauer.)

ain't sure though. Then we went back to contract work again.

Q. When the lumber came in you went back to piling? [404]

A. Yes.

Q. Do you recall doing any other work than piling while these three men were there—strike that —while these two men were there——

A. Yes, we was down building a little shack where we kept the water down there in the end of the piling yard.

Q. When did you start working on that shack?

A. On Wednesday some time.

Q. How did you happen to get that particular assignment?

A. I don't know, it was me and Les. building, we suggested to Parker it would be a good idea to have a shack building, to get our own shack when we took a rest period.

Q. When had you made that suggestion?

A. Oh, we had mentioned it several times.

Q. Had you mentioned that particular week, had you mentioned it that particular week?

A. Yes, there had been some discussion about it.

Q. Do you recall now about how you learned that you were going to build the shack?

A. No, I wouldn't. I know we built it. We worked on the shack that Wednesday part of the time, and we unit piled part of the time.

Q. Now when you were dry loading on those piles were you on an hourly scale, too?

A. Yes. [405]

(Testimony of Otto Bauer.)

Q. How did that rate compare with your rate in building the shack? A. The same.

Q. After you were through working on those piles how much lumber or how many board feet of lumber would you estimate were still standing in the piles?

A. Well, that would be pretty hard to scale lumber like that because you wouldn't know what they would scale out at to start with.

Q. Well, you were at one time——

A. I really wouldn't know.

Q. You were about to describe the type of lumber that it was. Would you describe what it was that you piled there? I mean, give a description of the type of lumber.

A. It was all random width and random length, and it was wedge shaped from about one side probably be 6-quarter and the other side 4-quarter, and there was no uniform lumber in that saw, and we had to, we separated the 12 and the 10, I think it was, on one load, and we put the rest on another load.

Q. I see. Do you have any name that you give that kind of lumber?

A. I don't know. I never handled any of it before. I don't know, that's the first I have ever——

Q. Had you dry loaded before on other lumber?

A. Yes. [406]

Q. How did the shape of this particular pile affect your dry loading?

A. Well, I don't know, it was hard lumber to

(Testimony of Otto Bauer.)

load. There was no—uneven, crooked, and when it was piled there, why, when you pile it uneven it usually twists up awful bad, and it's awful hard to drop a board on it, usually bends around. The dust and dirt, it was so damned dirty you couldn't hardly see when you dropped a board. We would sit there quite awhile there then.

Q. Where do you encounter the dust and the dirt?

A. Well, carriers going around there, dust in the lumber.

Q. I mean when you are loading out?

A. When you drop a board, why, you knock the dust off.

Q. Does the dust and dirt have any effect on the rate at which you can load out?

A. Oh, I don't imagine it did. I don't imagine it affects it much but to a certain extent a person don't want to—I know it was hot that day anyway, and it would all right, I imagine, make quite a difference.

Q. Mr. Bauer, did you have a position in the Union at the time these men were discharged?

A. Yes.

Q. What was your position?

A. I was on the committee.

Q. The standing committee? [407]

A. Standing committee.

Q. Did you go to any of these grievance meetings that have been testified to here?

A. I was on the last one.

(Testimony of Otto Bauer.)

Q. The second one? A. Second one.

Q. And where did that meeting take place?

A. In Vic. Clark's office.

Q. Do you remember about when?

A. Well, they come, they were off two weeks from the vacation of the 4th, and what time afterwards I wouldn't say the exact time when the meeting was.

Q. Who was present at that meeting for the Union?

A. There was Tim Sullivan and Fordham and Red Brown and Red Conger and myself.

Q. And for the Company?

A. There was Vic. Clark and Jim Bloom and Meinke, the attorney, and Conciliator Walker, I think his name is.

Q. Do you remember whether Parker was in there? A. Yes, Parker was there.

Q. Who did the talking for the Union on that second meeting?

A. Well, Parker started as spokesman.

Q. I said for the Union.

A. For the Union?

Q. Yes. [408]

A. Fordham started the meeting.

Q. And do you remember what transpired or what took place?

A. I wouldn't—the exact words that were said, the meeting took place on account of Hank and Max's discharge, was the only thing.

Q. Did the Company's representatives give any reasons for the discharge at that meeting?

(Testimony of Otto Bauer.)

A. Not working.

Q. Who said that? A. Mr. Meinke.

Q. Did he say when they were not working?

A. Well, the discussion was all the way through about the, them three days out in the yard.

Q. That you had worked on? A. Yes.

Q. Did Meinke give any other reasons besides that? A. Not that I can state.

Q. Did Clark give any reasons for the discharge?

A. I don't think Clark said five or six words at the very most.

Q. How about Mr. Bloom?

A. There was some discussion there brought up as foreman about warning them about going back to work or warning them about—to warn them, you know, about they had to put out more work or something, and there was discussion about foremen, and I remember about the—something about Bloom mentioned something about [409] that he had handled men a long time or something similar to that, but that's about all I can recall as being said.

Q. Did he offer any reason for their discharge himself? A. No.

Q. Did Parker state any reasons?

A. Well, Parker started the—Fordham discussed it first, and I think Parker said that they never tore down enough lumber, and at the time they had it figured out how much two men, and I think it was how much per hour, but I wouldn't say because I wouldn't know, and then there was some discussion, too, about something that wasn't in the contract, it didn't say something about contract work-

(Testimony of Otto Bauer.)

ers that was not to be working by the hour or something, and I don't know if it was Fim or Fordham brought it up about they were working $3.00 an hour, at the rate they were working them out there they would have to pay them $3.00 an hour, and so Parker made some statement about if he paid them $3.00 an hour—or I don't remember what all that was said there. The meeting I think there was about two hours or an hour and a half, somewheres around an hour, hour and a half to two hours.

Q. Was there any mutual understanding by the time the meeting ended? A. No.

Q. Between the Union and the Company?

A. Well, Meinke and Sullivan finished up and evidently he says, [410] that I think Sullivan said he would take it up with the Labor Commission or some kind of a remark, and after we went outside, why, Sullivan and Meinke had another talk. I don't know what that was about.

Q. In your experience with the Company do you know whether they had any such policy as a common day's work that dry loading being equivalent to 15,000 feet per man?

A. About the only time I day labored, that was in the 4 and 6-inch more or less on dry loading.

Q. What would you consider a normal day's output on that type of lumber?

A. On what, 4 and 6?

Q. Yes.

Trial Examiner Winkler: Is that what we are concerning ourselves with in this hearing?

(Testimony of Otto Bauer.)

Mr. Tillman: We are concerned with it in this way——

The Witness: Well, 4 and 6, I don't know, I wouldn't say, specify any amount. It all depends on if the crew really wanted to go in and work. They could probably get quite a bit though if they would work just, all just work steady you never could make any money contracting and taking it down, and you would have to make—you would have to make—I don't know exact, but you would have to make 35 or 40 thousand in order to make day labor. You would have to get that at least.

Q. If you were on contract the team would have to load out 30 [411] or 35 thousand?

A. That's right, I don't believe there would be a team could load 35,000 at once.

Q. Based upon your experience in piling do you think it's possible to tell, after a unit has been piled, which man loaded which end, piled which end?

A. I don't see how they could. They would set a unit, probably turn around or probably lots of times I will be laying stickers or something and Parker would come out, and probably one of your stickers would be opposite from the others. That's about the only difference. Of course, as far as that goes, the pilers try to get the stack on time, lay them down and come back with that load of timber. They get at times in a hurry, don't pay too much attention to it. A lot of time piling out in the dirt, why, them racks, you had to bump your lumber

(Testimony of Otto Bauer.)

hard, and the racks would move back, and the stickers would probably tip up on, set on edge, and after we got up on to the platform, why, it's lots nicer to pile.

Q. What improvements did they make to help out the pilers after the discharge?

A. They put on them two platforms.

Q. What were the platforms made out of?

A. Lumber right in the dirt, set there.

Q. How did they constitute an improvement?

A. Well, they had slots with steel racks. You run those slots [412] with little wheels on them, and in the yard there we didn't have, never had anything to hold your racks. We tried to use stakes to tamp them down but didn't do much good.

* * * * *

Q. After a piling team has finished a particular unit are there other people who could be responsible for knocking stickers out of alignment?

A. Yes.

Q. And where might that happen?

A. I know when I first went to driving, why, I was hauling out of the yard there yet part of the time, and when I started [413] there Parker told me not to pull the loads up too tight because we would lose stickers on the way there. If you got too close where you had to ease in the load, if you had to work in closer, if you wasn't real careful you would get one whole course and shove them out.

Q. Shove them out with the carrier?

A. Yes.

(Testimony of Otto Bauer.)

Q. Besides your carrier drivers, was there any other group of employees that might be able to throw stickers out?

A. No, because loaded truck drivers usually try to straighten them up more, if possible.

Q. When you were on the spare team was there any particular practice of the piling crews starting later than the regular employees or other employees in the plant?

A. I didn't get that question.

Q. When you were on the spare crew did the pilers as a group start to work later than the other employees in the plant?

A. No, we used to quit early, but we very seldom was, we might be a few minutes getting out of there, a little later.

Q. Did the spare team quit early also?

A. Yes, same time they did.

Q. As the regular pilers?

A. Yes, all did because usually if one team stayed longer than the others that wouldn't be fair to the other crew. One crew would make more money than the other. [414]

Q. Would the quitting time vary from day to day for the piling teams as a whole?

A. Not very much, no, but you mean from one crew to the other crew as a whole?

Q. No, I mean might you leave at different times on different days?

A. Yes, because after we went unit piling, after Vic. was in charge, we used to clean up all the lum-

(Testimony of Otto Bauer.)

ber in time to have it all cleaned up before we went home, probably have a lot left.

Q. In other words you finished cleaning before you left?

A. Yes, but when we was in the yard we used square piling, there was so damn much select dumped ahead we used to have it kept pretty well piled up, and we used to stay until pretty close to 4:00 o'clock. [415]

* * * * *

Q. What was your practice when there was too much lumber? As a team, what did you do, what did you select, I mean?

A. We used to always try to clean up. I know Pete sent us up there four or five times, but we didn't care to pile it much, but it was getting blue, and we had to get rid of some of it, pretty hard to handle with a bar, lots easier with the machine, seems like.

Q. Who is Pete? A. Troutman. [416]

* * * * *

Q. Now before Max and Hank were discharged did you hear any statements by management's representatives indicating that they might be willing to be fired?

A. No, I didn't hear they was going to be fired, but me and Les. was building the shack down there, and Parker says, "There is a couple guys going to get a pink slip."

Q. Do you remember when that statement was made?

(Testimony of Otto Bauer.)

A. I don't know, it was one of the three days they was working there.

Q. Was anyone else there besides you and your partner? A. Les. Shellhorn.

Q. Les. was your partner? A. Yes.

Q. Anyone else?

A. Not at the time, no. [417]

Q. Did you know who was meant, who Parker had in mind?

A. Well, I didn't have—I wouldn't think he would say it to us if he was going to give it to us, and there was only another crew there.

Q. And who was the other crew there?

A. It was Hank and Christophersen, or, I mean Christophersen and Max Gassner.

Q. Were you ever present on any occasion when this $25 payment was mentioned by——?

A. Yes, I was in the garage there one time there. Almost all the drivers were in there.

Q. Do you recall about when that was?

A. I wouldn't say just.

Q. Was it before the discharge or after?

A. That was before the discharge.

Q. Well, in terms of months can you place it as close as that?

A. It was during the summertime sometime. That's about as close as I can.

Q. What was the statement that you heard then?

A. I don't recall just what—it was something about 25 or 50 dollars, but I don't know what it was all about.

(Testimony of Otto Bauer.)

Q. Who made the statement?

A. Parker made the statement.

Q. Did you recall him mentioning anybody in his statement? A. No. [418]

Q. What is your best recollection of the statement?

A. I remember the time it was made, I think most of the drivers were in there before with several other guys besides the drivers.

Q. Now, what is your best recollection of the statement, I mean, the best you can remember?

Trial Examiner Winkler: What did Parker say, so far as you can recall?

The Witness: He said something about he bet him $25.

Trial Examiner Winkler: Who is "he"?

The Witness: He was talking about Bob Dant at the time.

Trial Examiner Winkler: All right, he said that Bob bet him $25.

The Witness: He would bet him $25 that he couldn't get rid of Hank and Max and then something about $50 if he couldn't, or if he could, I don't know what it was all about. There was some statements somewheres around there something like it, was made in the garage when we was all, all the drivers usually come down there at noon, and that's when it was made, but I—and at the time me and Les. was unit piling. We always used to stop in the garage, and Red Conger, he was driving at the time. I think he was in there, and Bill Nolan and Jasper

and most of the drivers. They called him that. I don't know what his name was, Jasper.

Mr. Stirling: I am going to ask that the answer be stricken. [419]

Trial Examiner Winkler: What is your grounds?

Mr. Stirling: Because he at first answered that he didn't know, couldn't recall what had been said and the statement does not make—the statement as he tries to put it together doesn't make any sense. It's not a coherent statement. He is just trying to, making an effort to answer your question, but he has already testified that he was unable to answer it.

Mr. Tillman: That's a matter for the probative value of the weight to be given the testimony. I think it's obvious that the witness is nervous. It's obvious from his demeanor. The testimony, as a whole, does make sense.

Trial Examiner Winkler: I will overrule the objection. Again I ask you to the best of your recollection what did Parker say? I don't want you to try to make a story. I want you to tell me to the best of your recollection, even if it doesn't make a complete story now, as far as you can tell me now what was said.

The Witness: Well, I know he said something about betting $25.

Trial Examiner Winkler: Who said?

The Witness: He bet Bob Dant $25.

Trial Examiner Winkler: He bet Bob Dant $25. What else was said?

The Witness: That's what he said.

(Testimony of Otto Bauer.)

Trial Examiner Winkler: He said he would bet him $25? [420]

The Witness: Yes.

Trial Examiner Winkler: What else?

The Witness: And then about 50, then he would bet another 50, or—that's been a matter of practically over a year ago, pretty hard to remember.

Trial Examiner Winkler: That's all right. In other words then, there is some reference to betting $50; is that what you are telling me?

The Witness: Twenty-five—$50, mixed up there some place.

Trial Examiner Winkler: All right now. Did they mention any name in connection with the bet? Did Parker mention any names?

The Witness: No, not except Bob Dant and a couple pilers, me and Les. were in there at the time.

Trial Examiner Winkler: He mentioned a couple of pilers. Now which pilers did he mention?

The Witness: I don't know what pilers, but I imagine it would be Hank and Max or Slim and Max or whichever ones there would be. I don't know. There was, you know, 25 and 50 dollars mentioned.

Trial Examiner Winkler: In other words, to the best of your recollection, you know that Parker made a statement about a bet that he could have had, did have, or might have with Mr. Dant? [421]

The Witness: That right's.

Trial Examiner Winkler: There was a matter of 25 or 50 dollars involved; is that it?

(Testimony of Otto Bauer.)

The Witness: That's right.

Trial Examiner Winkler: And also you don't remember that Parker mentioned any pilers specifically as being involved in the bet; is that correct?

The Witness: That's correct.

Trial Examiner Winkler: Any questions?

Mr. Babcock: No.

Mr. Tillman: No questions.

Cross Examination

Q. (By Mr. Stirling): Why do you imagine that Mr. Parker was referring to Max and Hank?

A. Well, I don't know——

Trial Examiner Winkler: May I ask now, are you speaking now in terms of the pink slip incident or the bet incident?

Mr. Stirling: This last.

Trial Examiner Winkler: I thought the witness's last testimony was that he didn't know.

The Witness: No.

Mr. Stirling: No, he made a statement.

Trial Examiner Winkler: Read the question.

(Pending question read.)

The Witness: I don't know about Max and Hank so much, [422] but I know he used to get on Max a lot when he would come out there. It seemed like he would never pay much attention to Max and Hank, either one, but he would talk more or less to the rest of them.

Q. (By Mr. Stirling): What do you mean he used to get on——?

A. Well, more or less, you know, if there is a

(Testimony of Otto Bauer.)

sticker crooked or something like that he used to always get more or less on Slim and Max. They were partners at the time. In fact, they were partners all the time.

Q. Then I take it from that that Parker did go out from time to time and make known to the pilers that the stickers were not straight?

A. Yes, he told me a good many times to watch my stickers closely.

Q. Have you heard him tell that to Max Gassner? A. Yes, I have.

Q. Have you heard him tell that to Christophersen?

A. No, I don't believe that I have ever heard him mention to Christophersen because Mike and Christophersen had the best unit out there. In fact, I think that was the nicest units there was piled.

* * * * [423]

Q. Now you tore down part of these loads that Hank and Max worked on July 13th, 14th and 15th?

A. Yes.

Q. Would you handle lumber like that on a contract basis? A. No.

Q. Why not?

A. It would be a good way to starve to death.

Q. Do you know about how long you worked on those piles? A. I would not say.

Q. Approximately?

A. We stopped for coke period, and I think the coke period—— [424]

(Testimony of Otto Bauer.)

Q. Would you say you worked an hour, an hour and a half, or——?

A. I would say probably an hour and a half.

Q. You mentioned that you had dry loaded at Sisters. A. Yes.

Q. That's the same kind of work as——?

A. No, that was on truck jacks.

Q. On truck jacks? A. Yes.

Q. How does that differ from what this work was?

A. You have to carry it on a load. You always try to work down on the pile, keep carrying it up, stacking it up, quite a bit slower usually.

Q. Which is slower?

A. On truck jacks.

* * * * *

Q. Well, this work at Sisters, was that on a contract basis?

A. Yes, we got a dollar a thousand for it.

Q. What type of lumber was it?

A. 4-quarter or some 6-quarter. That's all it was, 4-quarter and 6-quarter. [425]

* * * * *

Q. When you would go up you would spend a full day there? A. Yes.

Q. How much of that would you dry load in a day, you and your partner?

A. We would have—we would try to make $20.

Trial Examiner Winkler: This was on a contract basis?

The Witness: Yes, and we usually tried to hit a

(Testimony of Otto Bauer.)

little closer to $20 if we could. Lots of times we went home without it.

Q. (By Mr. Stirling): Lots of times you made over it?

A. Lots of times we went home without it. Sometimes we went over it, probably averaged $20.

Trial Examiner Winkler: How about board feet, would that be, how many board feet would that be?

Mr. Babcock: That would be 20,000 board feet?

The Witness: It would be 40,000.

Trial Examiner Winkler: 40,000? [426]

Mr. Stirling: For the pair?

The Witness: For the pair. [427]

* * * * *

Mr. Stirling: Do you want to know the materiality?

Trial Examiner Winkler: Yes, sir.

Mr. Stirling: Is it not material how many board feet these men dry loaded?

Trial Examiner Winkler: I thought the question contemplated what other work he did.

Mr. Stirling: All right, what follows? He says they dry loaded 40,000 feet, and in addition to that, in addition to [428] the dry loading activities, they did some other work in connection with.

Trial Examiner Winkler: Other witnesses have testified during this 8-hour day, for example, in which they turned out 40,000 board feet. They also did something else in the same day.

Mr. Stirling: Well, they did something else in connection with that dry loading which they do not ordinarily do.

(Testimony of Otto Bauer.)

Trial Examiner Winkler: Coming back to the original proposition again, the wood in the piles we are concerned with on these three days was apparently irregular sized wood. Now, what is the bearing of what this man can do at another place working under different conditions because they are different companies, while working on irregular size wood, now how is that going to help us decide whether or not Gassner and Christophersen did a day's work at the respondent's plant?

Mr. Stirling: Unfortunately, we can't find any piles that are just identical to the piles that these men worked on those three days, but we can ask these men about other dry loading that they did. Now I realize that if it is proven that this particular dry loading on July 13, 14 and 15 was wood of a different quality and type than we bring out in other cases, that is, the probative value of the dry loading at Sisters is not as great as though it were identical, but certainly it's of value. They still, they are still dry loading timber. [429]

Trial Examiner Winkler: What inference can I draw from it? Let's assume that this man and his partner did 40,000 per day working on irregular size wood under slightly different working conditions. Now what inference can I draw as to how much work they should have produced working on the irregularly sized wood those three days in July?

Mr. Babcock: May I point out also that they were working, according to the testimony, on the contract base at Sisters and that the witness has

(Testimony of Otto Bauer.)

already testified he wouldn't work on the contract base on the wood there in the yard.

Trial Examiner Winkler: I realize that.

Mr. Watts: There is no criterion to apply to the miscuts that we are concerned with in those, in this three-day period so all we can do is look to something similar.

Trial Examiner Winkler: It is not similar.

Mr. Watts: It is as good as can be obtained.

Mr. Stirling: They have put in testimony about the amount these men have dry loaded. Now this isn't identical lumber, but when a man is able to dry load 40,000 feet a day, a pair of men, and two others do considerably less than that, considerably less——

Trial Examiner Winkler: Yes?

Mr. Stirling: I think that there is certainly an inference that can be drawn.

Trial Examiner Winkler: What is the inference I can draw? [430]

Mr. Stirling: That they didn't pile, dry load as much as they could have.

Mr. Babcock: We concede that. That's absolutely conceded all the way through.

Mr. Tillman: We concede that, no dispute.

* * * * *

Mr. Stirling: Well, let me try this question.

Q. (By Mr. Stirling): How long a day did you put in at Sisters?

A. We always left about 7:00 o'clock, and we would usually try to, we would leave before 7:00,

(Testimony of Otto Bauer.)

if I remember right we left about 6:00, and 6:00 or 6:30, somewheres around there, and then we would drive up to Sisters, and we would usually take a half hour noon or 20 minutes and try to be back to town about 4:00 o'clock.

Q. Back in Redmond?

A. Quitting time, yes.

Q. Then your natural working time out there—?

A. Was pretty close to eight hours, right in the vicinity of [431] eight hours.

Mr. Stirling: I think that's all.

Trial Examiner Winkler: I want to ask something. You mentioned something earlier about inventories, Mr. Stirling. Now would the records of the Company show what the average, or what these teams actually produced doing this type of work?

Mr. Stirling: No, not so far as I can find. The records of the Company will show what was in those particular piles on July 13th, 14th and 15th, or rather, I should say July 12th, what was in those three piles at that time.

Trial Examiner Winkler: Yes?

Mr. Stirling: The records of the Company will show that. Of course, the records of the Company will show what these men did in green piling because they are paid on a piece rate basis in their green piling, but so far as I can determine we have not been able to find the records to show dry loading rates at Dant & Russell. [432]

* * * * *

Q. (By Mr. Tillman): Will you state whether or not you work harder when you are on a contract

(Testimony of Otto Bauer.)

basis dry loading than you do when you are just on day scale?

Trial Examiner Winkler: I think that has been established, hasn't it?

The Witness: I think that is very much so because there is very few guys out there dry loading, very few of them make wages at it, or they would be out there loading. [433]

* * * * *

WILFRED A. FORDHAM

a witness called on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Tillman): State your name, please, full name. A. Wilfred A. Fordham.

Q. And your home address?

A. 824 Federal, Bend, Oregon.

Q. What is your occupation at the present time?

A. Business agent of Local 6-7, IWA, CIO.

Q. How long have you been business agent?

A. Started to work at November, 1945.

Q. You have been present during the proceedings up to date? A. Yes.

Q. Do you recall an incident about the summer of 1949 involving 8-quarter lumber in which there was a dispute between the pilers and the Company? A. Yes, I do.

Q. Would you state whether or not you were called in on that dispute? A. Yes. [436]

* * * * *

(Testimony of Wilfred A. Fordham.)

Q. (By Mr. Tillman): Well then, without looking up the date, Mr. Fordham, how did you happen to be called into that particular dispute?

A. I believe Max called me up.

Q. Max who? A. Gassner.

Q. Called you up how? A. Telephone.

Q. Telephone. Now did you attend any of the grievance meetings following the discharge of Max Gassner and Henry Christophersen? A. Yes.

Q. Did you attend the meeting which was testified to yesterday as being the first meeting?

A. Yes. [438]

Q. As best you recall, when did that one take place?

A. That took place the same day as they were given their checks, 18th of July.

Q. And where was the meeting?

A. In the Dant & Russell office, Redmond, Oregon.

Q. Who do you recall as being present?

A. Myself from the committee representing the Union and Mr. Clark, Mr. Bloom and Mr. Parker were representing the Company.

Q. Would you state whether or not Mr. Christophersen was there? A. Yes.

Q. Would you describe how that meeting started off or who said what?

A. Well, I can't just exactly say how it started. We requested a meeting on the discharge of these two men, and I believe probably, that Mr. Clark maybe made the opening statements and said that

(Testimony of Wilfred A. Fordham.)

what did we want to know, and I think I replied I wanted to find out why they were discharged, and I believe Mr. Clark remarked that he had been out of town during the time that these fellows had, this controversy was, and that he was going to turn, as far as the Company's part, over to Floyd Parker who took over as far as the Company was concerned in that meeting.

Q. In other words, Parker took over from that point on? A. Yes.

Q. Well then, in the course of the meeting did Parker state the position of the Company as to why the men had been discharged? [439] A. Yes.

Q. What reasons did he give?

A. Not doing their work, loafing on the job.

Q. Was any specific period of time referred to?

A. I believe he mentioned something about they was late in starting to work in the past.

Q. No, my question had reference in giving the reasons for these discharges, loafing and so on, did he specify when they had loafed and so on?

A. Oh, it was during this three-day period on this dry loading.

Q. In the course of that particular meeting did Mr. Parker give any other reasons which preceded this three days' work? A. No.

Q. Did Mr. Clark? A. No.

Q. Mr. Bloom? A. No.

Q. Did that first meeting settle the grievance or——? A. No.

Q. Was there a further meeting? A. Yes.

(Testimony of Wilfred A. Fordham.)

Q. When did it take place?

A. The latter part of July, I believe, the 26th.

Q. And its location was where?

A. At Dant & Russell, Redmond office. [440]

* * * * *

Q. (By Mr. Tillman): On the second meeting were any other reasons given by the Company for discharging either Max Gassner or Henry Christophersen than they gave at the first meeting?

A. No.

Q. Was there a determination of the grievance at that second meeting to the satisfaction of both parties? A. No. [442]

Q. What was the Union's position at the end of the second meeting?

A. We wanted those men reinstated.

Mr. Tillman: I have no further questions to put. Examination by Mr. Babcock:

Q. At these two meetings did the Union committee or the Union spokesman state what the Union's position was with respect to these discharges?

A. We took just the opposite position of the Company, that we didn't think that they had been loafing and that they had done a fair day's work.

Q. What was said in that connection by the Union committee?

A. I don't know just what you mean.

Q. Well, what specifically was said with respect to that work that was done?

A. Oh, we had figures. Mr. Parker estimated

(Testimony of Wilfred A. Fordham.)

how much he thought was in the piles. First he mentioned the figure 48,000, and finally the Company settled for 50,000, that they thought the fellows had handled, and we were pretty much agreed on the amount of lumber.

Q. Now was there any discussion of that amount, whether that amount represented a fair day's work or any comparison made of that amount with work done under other circumstances?

A. No. The Union took the position that they had done enough work, the committee? [443]

Q. As the business agent, do you attend grievance meetings between plant committees and management? A. Yes.

Q. Do you attend all of such meetings or just part of them, or what?

A. Just part of them.

Q. Since you have been business agent have you from time to time attended grievance committees arising at the plant of Dant & Russell?

A. Yes.

Q. Will you indicate approximately how many of such meetings you have attended?

Trial Examiner Winkler: Is this since November, 1945?

Mr. Babcock: Yes.

The Witness: No, I don't know just how many we have had, quite a few of them.

Trial Examiner Winkler: What does "quite a few" mean? I mean, that doesn't make——

Q. (By Mr. Babcock): Give us some idea of

(Testimony of Wilfred A. Fordham.)

whether there have been one or an average of one a month or one every six months or whatever it might be.

A. Well, there was periods of time we didn't have much trouble. Then again it seemed like we got into, we had things going continually for several months at a time. We had trouble with the piling situation for a long time. It seemed like we would about [444] get one thing straightened out and maybe there would be a controversy of the type of piling or something, and then we would have it to do all over again which was quite a grievance procedure in that piling situation at Dant & Russell.

Q. Were there more grievances with respect to the piling than with respect to matters arising among other departments there?

A. Yes, by far.

Q. When you first became business agent at that time did you have association with the crew at Dant & Russell? A. Yes.

Q. And did you take up or were you, did you participate in any grievance meetings at that time?

A. Yes.

Q. Who was the, who were the members of the plant committee out there at the time?

A. To the best of my knowledge, Max Gassner was all there was.

Q. How long did that situation continue?

A. Oh, I think we elected a committee not long after it.

(Testimony of Wilfred A. Fordham.)

Q. Did Gassner continue to be active out there?

A. Yes. [445]

* * * * *

Q (By Mr. Babcock): Bus, how many meetings did you attend in connection with the strike between the Union and the Company?

A. I was gone at the time that they went on strike. Sullivan and myself met with Mr. Meinke in Portland once. We must have had a meeting or two in Redmond. [450]

Q. With whom, that is, who represented the Company?

A. At the time the strike was settled Vic Clark was taking over.

Q. Was Mr. Dant present at any of the meetings at that time?

A. No, no, he wasn't.

Q. Now what was the issue on which the strike was originally called?

A. Vacation for five veterans.

Q. Was there at that time any pending question or dispute with respect to rates for lumber piling?

A. We were having that, we were having trouble about the piling at that time, at the time the strike was called.

Q. But that wasn't, that wasn't an issue on which the strike was called? A. No.

Q. During the meetings with the Company were there any discussions about the lumber piling?

A. Yes.

Q. How did that come into it?

(Testimony of Wilfred A. Fordham.)

A. You mean over the strike issue, during those meetings?

Q. Yes, how did the matter of lumber piling come into the discussions?

A. At the time that we met with Mr. Meinke in Portland they questioned myself and Sullivan quite closely about the strike situation, if that was the only issue, and we told them it was, and then at another meeting, at one of the meetings that we [451] settled on, were working out the settlement, Meinke mentioned the fact that there was three or four men that they would just as soon not take back.

Mr. Stirling: I object to that.

Q. (By Mr. Babcock): Who was that?

Mr. Stirling: I object to that as hearsay.

Trial Examiner Winkler: Overruled.

Q. (By Mr. Babcock): Just a little further on that. Who else was present at that meeting on behalf of the Company?

A. I believe Mr. Clark was there. I am not certain who was there, Mr. Clark——

Q. Was that a meeting at Redmond?

A. Yes.

Q. At the plant office? A. Uh-huh.

Q. Did he say who the employees were?

A. No.

Q. Did he say what their jobs were or what department they were in? A. No.

Q. You were, what were you discussing at the time that this statement was made.

A. Settling the strike.

(Testimony of Wilfred A. Fordham.)

Q. Well, I mean what particular subject was being discussed?

A. I can't follow the question there. [452]

Mr. Stirling: I object to it as a leading question.

Mr. Babcock: It is not leading.

Trial Examiner Winkler: Overruled.

Q. (By Mr. Babcock): If he doesn't understand it doesn't make much difference. From the discussion did you draw any conclusions as to who he was referring to?

A. Well, of course the piling situation had been a problem and was a problem. He talked about four men. There was four regular pilers.

Q. From that you formed the opinion, at least, that he was talking about the pilers?

A. Yes.

Q. Were there any other statements concerning this subject during the course of these meetings?

A. I believe so.

Q. Did you attend the meeting at which—after the strike which has been referred to here at which there was an agreement reached on the rate for the piling work, the unit piling? A. Yes.

Q. And who was present at that meeting for the Company?

A. Mr. Clark, Meinke. I am not sure, I believe Mr. Bloom was there.

Q. Was there a conciliator there?

A. Yes.

Q. Now was there any statement made at that meeting by anyone [453] in behalf of the Company concerning the pilers?

(Testimony of Wilfred A. Fordham.)

A. I don't remember any.

Mr. Babcock: I believe that's all.

Trial Examiner Winkler: Mr. Stirling?

Cross Examination

Q. (By Mr. Stirling): Mr. Fordham, you say you have been business agent since November of 1945? A. Yes.

Q. Then the Dant & Russell plant has been under contract with your union at least since that time? A. Yes.

Q. So far as you know, was it under a contract prior to that? A. Yes.

Q. Then early in your time as business agent there was no regular standing committee in existence; is that right, when you first became business agent and for awhile thereafter?

A. Some of the fellows had left that were on it. I think Max Gassner was the only one left on the regular committee.

Q. And the other members of the committee were not elected for awhile after that; is that right?

A. That's right.

Q. Now just to clear up some . . . your testimony, you stated that Mr. Dant was not present at some, at meetings after the strike; is that what I understood you to say, or let me put it this way. Was or was not Mr. Dant present at several of the meetings [454] involving the strike?

A. Yes, he was prior to the strike, yes.

(Testimony of Wilfred A. Fordham.)

Q. Well, was he at any of the meetings during the strike?

A. He was not present after Meinke took over.

* * * * * [455]

Q. (By Mr. Stirling): Well, do I understand from your testimony that you do not remember seeing Mr. Dant at any meetings after the strike ended? A. No.

Trial Examiner Winkler: Are you talking now after the strike ended in connection with strike settlement? I mean, what meetings are you referring to now?

Mr. Stirling: No—yes, the strike settlement and any of the meetings thereafter.

Trial Examiner Winkler: You mean meetings relating to the strike? [456]

* * * * *

Q. (By Mr. Stirling): It's the meeting that the strike was settled at, but prior to that he had attended several meetings? A. That's right.

Q. Did you attend most of the meetings prior to the strike in 1948? A. I think so.

Q. And was Mr. Dant present at most of those meetings? A. Yes.

* * * * *

Trial Examiner Winkler: I have one question. Will you tell me exactly what the Union's position was at the two grievance meetings concerning Mr. Christopherson's and Mr. Gassner's discharge? I mean, I presume the Union took the position that

(Testimony of Wilfred A. Fordham.)

the Company should not have discharged these men. Now why did [457] it take that position?

The Witness: We felt that they had done a fair day's work, and then on top of that we felt that it was a temporary job, that they were not on their regular job, and it should have been the Company's position if they were not doing their work on a temporary job to send them home until their regular job was there for them.

Trial Examiner Winkler: Was there any discussion at these meetings concerning Union activities of these men?

The Witness: Well, Union—I don't—I am not sure whether there was or not. Max and Mr. Dant, when we were negotiating with Mr. Dant they used to have some pretty heavy arguments with him in all meetings.

Trial Examiner Winkler: Yes, I am not asking you that question. I am asking you whether or not the Union made any contention at either of these two grievance meetings that the reason for the discharge was that these men had been active in behalf of the Union?

The Witness: Oh, at the second meeting when we were deadlocked, why, that's what we told them.

Trial Examiner Winkler: Exactly what did you tell them?

The Witness: I didn't tell them. Jim Sullivan told them.

Trial Examiner Winkler: What did he say?

The Witness: Told Meinke that if that was the

stand [458] they were taking that we would file charges against the Company.

Trial Examiner Winkler: Yes, but at that point there had been no question about the Union activities of these men, had there? I mean, you had not filed charges because—let's assume that the Company had discharged these people while they were working on a temporary job. That doesn't relate to Union activities, does it? I mean how did the question of Union activities come up? Did it come up at all at these meetings, at the two grievance meetings?

The Witness: We talked about it at the second meeting.

Trial Examiner Winkler: What was spoken about it; who said what?

The Witness: After we had listened to their reasons for saying these men were discharged, why, we thought that they had done a fair day's work, and we told them we thought there was more entered into the picture than that.

Trial Examiner Winkler: Did you explain what you meant by more entering into the picture?

The Witness: That they had been gunning for these fellows for a long time.

Trial Examiner Winkler: Who said that?

The Witness: We thought that that's——

Trial Examiner Winkler: Did you say it?

The Witness: I believe that Sullivan made the statement to that effect. [459]

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VOLUME II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1952

No. 97

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THOMAS W. DANT, ET AL., CO-PARTNERS, DOING BUSINESS AS DANT & RUSSELL, LTD.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 2, 1952
CERTIORARI GRANTED OCTOBER 13, 1952

No. 12985

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THOMAS W. DANT, ROBERT E. DANT (individually and as guardian for Diana Kerr and Daphne Kerr), JOHN R. DANT, ELEANOR C. DANT, MARY B. DANT, R. J. DARLING, E. S. GOODELL, MRS. MARY GOODELL, GLEN W. CHENEY and DOROTHY D. McNARY, co-partners doing business as Dant & Russell, Ltd.,
Respondents.

Transcript of Record

In Two Volumes
Volume II
(Pages 385 to 585)

Petition for Enforcement of Order of the National Labor Relations Board.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

MICHAEL GASSNER

a witness called on behalf of the General Council, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Tillman): What is your name?

A. Mike Gassner.

Q. Where do you live?

A. 515 South Third, Bend, Orego-.

Q. Mike, are you any relation to Max Gassner?

A. We are cousins.

Q. What is your occupation at the present time?

A. Piler, lumber piler.

Q. For whom are you working?

A. Dant & Russell.

Q. Do you remember when you were employed or about when you [460] were employed by Dant & Russell?

A. I think it was in April 23rd, along in there, 1946.

Q. And at that time what job were you hired in at? A. I was hired in as a piler.

Q. Have you held that same position ever since you were hired? A. I have. [461]

* * * * *

Q. How long did Christophersen remain your partner?

A. I was just going to figure out. I went to work with Christophersen in October, 1948, and I worked with him up until the discharge.

Q. Mike, during the time that you were em-

(Testimony of Michael Gassner.)

ployed by the Company had you ever served on any of these standing committees or grievance committees? A. No.

Q. Had you ever held any office in the Union?

A. No. [462]

* * * * *

Q. (By Mr. Tillman): When you were employed —strike that—following your employment were there, was there any person who was outstanding in Union activities?

A. Max Gassner was the only one I knew of at that time.

Q. At that time do you know what position Max held in the Union?

A. I understood that he was a plant committeeman.

Q. During your employment as a contract piler did the pilers have a dispute with management just involving themselves and their work?

A. Just concerning our job?

Q. Yes, just concerning piling.

A. We had lots of them.

Q. In those disputes did the pilers have any spokesman?

A. Well, Max Gassner was usually our spokesman.

Trial Examiner Winkler: As of what period are we speaking, Mr. Tillman?

Mr. Tillman: During his entire employment.

Q. (By Mr. Tillman): Now up until the dis-

(Testimony of Michael Gassner.)

charge was there anyone besides Max that acted as spokesman for the pilers up until the discharge?

A. Yes, there was, Christophersen.

Q. Anyone besides those two?

A. Not in the pilers. [463]

* * * * *

Q. Now do you recall sometime prior to going on your vacation in 1949 that there was a dispute over 8-quarter lumber?

A. Yes, there was a dispute over 8-quarter lumber at that time.

Q. What was the nature of that dispute and what were the circumstances?

A. We were called in, the pilers were called in to a meeting to settle a wage adjustment on the unit piling which had been hanging five for several months. It had not been settled, and as I remember it at that meeting Clark had offered 97c a thousand for all green lumber coming into the plant at Dant & Russell.

Mr. Stirling: I want to enter an objection to this [465] testimony. It started out with the 8-4 question which has been testified to by Mr. Christophersen as having been dropped. Now we are just stirring it up again. Your testimony so far has shown that there was a dispute but that it was dropped. Now are we going to go through it again?

Mr. Tillman: This witness will, I submit, add something to the dispute which has not come into the record as yet, and at the present time he is in the process of giving the background which led up to the dispute.

(Testimony of Michael Gassner.)

Mr. Stirling: I see no reason for giving any more about the dispute, background, or surrounding circumstances in view of the fact that the dispute was dropped.

Trial Examiner Winkler: Well, I can't read Mr. Tillman's mind. He says he has something new to develop. I presume he does. Continue, Mr. Tillman.

The Witness: As I understood it, all lumber coming in there was going to be 97 cents, Then later on we gets this 8-quarter lumber in there. They told us we was not to pile it.

Q. (By Mr. Tillman): They told all pilers that?

A. Yes.

Q. What happened?

A. It was set off to the side and torn down by day labor. Parker came out and said we would get that lumber but that it would be resawed into 4-quarters.

Q. In other words, after it had been resawed you would get to [466] pile it? A. Yes.

Q. And as I understand it, you wanted to pile it before it was resawed as well as after?

A. We felt that we were going to tear it down.

Q. Tear it down for resawing? A. Yes.

Q. What did the pilers do about it then?

A. Well, we had a discussion there. Parker came out and wanted to know what the beef was, as I recall. I don't remember all the words that were spoken there. Max went across the street and called the business agent at Bend.

(Testimony of Michael Gassner.)

Q. Was Parker there at the time?

A. Parker was there at the time.

Q. Did Parker know what Max was going to do?

A. I presume he did.

Q. How would he know?

A. Well, Max had made some mention that he thought he would call the business agent in.

A. All right, what happened after Max went across the street then?

A. Christophersen went to see about finding the rest of the committee. Whoever they were I don't recall, so Parker stood there for a little bit. He said, "There's going to be a couple of pilers going down the road talking to themselves," and he [467] took off. The other piler, Slim Erickson, was there close by.

Q. Were you and Slim the only ones there?

A. As I recall it, yes.

Q. Now, Mike, were you present at the time that Max and Hank were discharged?

A. Well——

Mr. Stirling: Just prior to that question I move again that all the testimony with respect to this 8-4 dispute be stricken for the reason that nothing new has been added by it to what went on before, and for the further reason that it has been already testified that that dispute was dropped.

Mr. Babcock: A great deal has been added.

Trial Examiner Winkler: Well, I will just overrule your objection.

(Testimony of Michael Gassner.)

Q. (By Mr. Tillman): Were you present, Mike, when Max and Hank were discharged?

A. I were present when they were told that they had a surprise for them.

Q. When was that, do you remember?

A. That was on the Monday morning after my vacation. It could have been the 18th of July, 1949.

Q. I think the date—you were reporting back for work, were you? A. Yes.

Q. After your vacation, and where did the incident take place? [468]

A. In front of the office at Dant & Russell.

Q. And who was there at the time?

A. Floyd Parker.

Q. Anyone else besides Floyd Parker and you?

A. Not that I recall.

Q. I mean were you and Floyd the only two people there?

A. Well, Max Gassner and Christophersen.

Q. Would you state then as best you recall it what was said when Parker came up to you or you came up to him?

A Well, we got out of the car, was going to punch the clock.

Trial Examiner Winkler: Who is "we", you, Max, and Christophersen?

The Witness: What?

Trial Examiner Winkler: Who got out of the car?

The Witness: Christophersen, Max, and myself.

Trial Examiner Winkler: Yes.

(Testimony of Michael Gassner.)

The Witness: Floyd Parker says, "I have a surprise for you, Max and Chris." They said, "Now what?" He said, "I have your checks waiting in the office for you."

Mr. Tillman: Q. Was anything else said that you remember by the pilers or by you or Parker?

A. Not that I recall. [469]

* * * * *

Q. In the course of your piling with the Company, Mike, have you ever piled with Gassner, with your cousin, Max? A. Yes, I have.

Q. And have you, in the course of piling with other partners, have you piled in the vicinity where Max was piling? A. Near by, yes.

Q. Have you had an opportunity to observe his work? A. Yes.

Q. As a piler? A. Yes.

Q. At any time in your employment have you heard Max criticized because of the way in which he was piling? A. Not that I recall.

Q. What would be your opinion of Max as a piler? [470] A. My opinion?

Q. Yes.

A. Oh, I would say he was a pretty fair piler.

Q. Now had you in the course of working with Henry, had you ever heard his work criticized by management? A. No.

Q. And working with him as a partner, did you ever have any difficulties with him as a partner?

A. No.

Q. During your employment as a piler did you

(Testimony of Michael Gassner.)

ever do any day work when there wasn't any green piling to be done?

A. Yes, I have done some.

Q. Do you remember on what occasions you would work on day work?

A. Well, in the winter months the mill would not run steady at times. There would be periods there that there wouldn't be any lumber coming from the mill. We would go down, and they would let us tear down dry lumber if they had any.

Q. Now what winters do you recall that that happened?

A. In the spring of 1949. I don't just remember whether that was in February or March. I wouldn't recall the month.

Q. Do you recall any other winters that—how about last winter? Did you do any day work last winter? A. This past winter, no.

Q. Now have you had other experience at tearing down or loading out dry lumber? [471]

A. Other than——?

Q. Other than the one that winter you mentioned?

A. Yes, I have tore down some.

Q. Would you describe the work involved in tearing down for dry loading purposes, what each member of the team does?

A. Well, in tearing down lumber one man has to be on top of the pile. One man is down below. The man on top, he shoves the lumber, he goes back to the back end of the pile, picks the boards up

(Testimony of Michael Gassner.)

and shoves them down. The man down below, he sort of catches the lumber on his knee. Of course, he has an apron, understand, slides it through his apron and catches the board about the time it balanced on his knee. Then he lays the lumber down on the blocks.

Q. Well now, of those positions is one harder than the other to work at?

A. Oh, absolutely.

Q. Which is the harder position to work at?

A. Picking up the lumber on the pile.

Q. Why is that hard?

A. Because you are stooping.

Q. And is that harder than either position at green piling?

A. Well, it tires you out more in the back.

Q. Because of the stooping?

A. Yes. [472]

* * * * *

Q. In your experience around the plant there in dry loading what would you consider a common day's work for, at day pay, for dry loading?

A. Will you state that question again?

Trial Examiner Winkler: Read the question, please.

(Pending question read by the Reporter.)

The Witness: Well, that would depend on the width of the lumber, condition.

Q. (By Mr. Tillman): That would vary then?

A. Yes.

Q. Do you know whether or not the Company

(Testimony of Michael Gassner.)

had any standard policy that they expected so much thousand loaded out for a day's labor?

A. Not that I ever heard of any. [473]

Q. Did the amount vary, as far as you?

A. Sure it would vary.

Trial Examiner Winkler: What would vary, the amount of work you would turn out in dry loading?

The Witness: Yes, the amount on lumber you would tear down.

Trial Examiner Winkler: Yes.

Q. (By Mr. Tillman): Is it possible to fix any sort of a range for a day worker? I mean between a minimum and a maximum that he might be getting out, depending on the lumber?

A. No, not—I don't quite get the question.

Q. Well, what I am wondering is, in your experience there, in view of the fact that lumber may vary, is it possible to say that it will—is it possible to say that you will expect a man to turn out between this amount and that amount considering the lower level and the higher level, or what would you expect a day man to turn out?

A. What would I expect to do if I was a day man?

Q. Well, all right, what if you were a day man.

A. It depends on the width of the lumber, the kind of lumber. I would say about 15, 20 thousand.

Q. And what is that figure for, for the team or for the man?

A. For a team. I have tore down some out there that we perhaps got out 15,000 in one day.

(Testimony of Michael Gassner.)

Trial Examiner Winkler: Was that on regular sized lumber? [474]

The Witness: No, this is not the regular size lumber. It's 4 to 6-inch lumber, random lengths.

Trial Examiner Winkler: Excuse me, you just testified you turned out how many board feet was that?

Mr. Tillman: 15.

Trial Examiner Winkler: Was that miscuts?

The Witness: No, this is 4-quarter, 4 and 6-inch.

Trial Examiner Winkler: Yes, but they were not miscuts?

The Witness: They were not miscuts. [475]

* * * * *

Q. Now on the subject matter of unit piling, what is the position of each member of the team in piling units?

A. What is the position of each man?

Q. Yes, where is each man stationed?

A. Well, one man is on one end of the load and one on the other.

Q. And is there any practice as to who picks up the boards from the load first?

A. Yes, it is a practice that one man breaks the board and has them ready so that when the other man gets through with his stickers they both can take the board easier that way.

Q. Are you both holding on the same boards then? A. Yes.

(Testimony of Michael Gassner.)

Q. When you have got hold of the same boards what do you do with the boards?

A. You throw it on the——

Q. On the unit?

A. On the unit. The unit is a stack of lumber flat like this table only we have stickers. We lay five stickers now which we never did before all the way through. [477]

Q. How many did you lay before all the way through?

A. Four. When we started unit piling we laid up about five courses of boards and five stickers. From there on up it was four stickers.

Q. Five stickers for five courses; four stickers for the remaining courses? A. Yes.

Q. I suppose there is no average number of courses. It depends on the thickness of the board.

Trial Examiner Winkler: What do you mean by "courses"?

Mr. Tillman: Courses are the layers.

The Witness: The layers of lumber.

Trial Examiner Winkler: You had five layers of lumber with stickers in between?

The Witness: With five stickers. From there on you would lay just four stickers, two high each end.

Mr. Tillman: Would you read the last question.

(Last question read by the Reporter.)

The Witness: They were built as high as a carrier could get over them and lift the load up.

Q. (By Mr. Tillman): Is it true that if you were using 8-quarter you would have fewer courses than if it were 4-quarter? A. Yes, you would.

(Testimony of Michael Gassner.)

Q. Now in the placement of the stickers, back before these men were discharged, on the unit piling who took—did both members [478] of the team place stickers? A. Yes.

Q. And how many was each member responsible for? A. Two stickers apiece.

Q. Two apiece when there was four?

A. When there was four.

Q. And on the first five courses who was responsible for the middle one?

A. I would be. I always had laid the third sticker.

Q. So it's customary for one member to lay three and the other one two?

A. That's right, because the other member breaks the lumber out.

Q. Now in the actual placement of the boards on the unit by the two members of the team is it possible for one end of the unit to be sloppy and not the other end?

A. It is possible, but the boards would still have to lay straight.

Q. The boards would be straight?

A. Your stickers might be out of place, but your boards would have to lay straight.

Q. Do you think it's possible after a unit has been piled and taken away from there for someone else to come up and decide that you might pile one end of it and Henry piled the other end of it?

A. Will you repeat that to me? [479]

Trial Examiner Winkler: Read the question.

(Testimony of Michael Gassner.)

(Pending question read by the Reporter.)

A. Taken away with what, a carrier or a lift truck?

Q. Let's assume the carrier had taken it away and then somebody for the first time looks at the pile. Can they tell from the looks of the pile whether you had piled one end of it?

A. Not if it was piled with the carrier I wouldn't say they could, not as rough as the ground was at that time.

Q. In the matter of these stickers getting out of place then, what—who else might be responsible for that besides the pilers? A. Carrier.

Q. Anyone else, any other type of employee?

A. No, I wouldn't say that there was any other other than the carrier carrying the lumber over rough ground to where it was to be stacked. When a carrier straddles one of those loads, the way it used to be, you couldn't hardly blame the carrier driver for it either because we piled one side up against, right at the edge of the blocks and we had loose racks that were laid out sometimes. You couldn't hold them down because they were too light. Naturally, your stickers would come through sometimes.

Q. In other words, they would stick out beyond the load; they would protrude?

A. They would protrude, yes, beyond the board.

Q. Then what happened when the carrier came?

A. Well then, the carrier would hit them and knock them out of line. [481]

* * * * *

(Testimony of Michael Gassner.)

Q. During the time that you were employed there while Max and Hank were still working did you hear any criticism directed at any specific piler for staining lumber in which one piler was singled out, I mean? A. No.

Q. Or one team? A. No.

Q. Did you hear any one piler or one team criticized for sloppy piling?

A. Not that I recall. [483]

* * * * *

Examination by Mr. Babcock:

Q. Mike, when you worked at day work in either piling or loading, I guess it would be at loading, would it, dry loading? Did you work as hard and fast as you did at contract work?

A. Did I work as fast at——?

Q. At day work? A. No, I wouldn't.

Q. Did the other men doing that work, from your observation, work as hard and fast at day work as they did at contract work?

A. No, not that I can recall. [484]

* * * * *

Q. Now, when you dry loaded there in the spring, I think you said February or March of 1949, do you remember about how many days you worked at that?

A. I don't just recall how many days I did put in out there.

Q. Well, was it several days?

A. Possibly three days.

(Testimony of Michael Gassner.)

Q. Do you remember what you were working on, what kind of lumber?

A. Four-quarter, 4 and 6-inch.

Q. That was a mixed pile then? [487]

A. Yes, it was mixed.

Q. What did you say you estimated that you and your partner handled per day at that work at that time?

A. I would say around 15,000.

Q. Would that be for the two of you?

A. Yes.

Q. And who was working with you at that time?

A. Christophersen.

Q. Now did you happen to see or examine the piles that Hank and Max were working on at dry loading the three days before they were fired?

A. No.

Q. Now there has been testimony here that those piles were made up of lumber some of which at least was miscut and that it was of random widths and lengths. In handling that kind of lumber could you produce more or less, that is, load out more or less than of the 4's and 6's? Do you understand my question?

A. Well, it would probably be a toss-up.

Q. Would the fact that the lumber was miscut present any particular problems?

A. Yes, it would make a problem. If it's miscut you would probably have to do a lot of shimming it upon the load. You would have to have more stickers in it to keep it level.

(Testimony of Michael Gassner.)

Q. What does shimmying up mean?

A. Well, you have a board that's thick on one edge than on the [488] other. Sometimes you have to turn the thin edge out so you lay a thin board, sticker, or something on the out edge and shim it up. Then you put your other boards on top of it.

Trial Examiner Winkler: In other words, to keep the courses level; is that correct?

The Witness: Yes. [489]

* * * * *

Cross Examination

Q. (By Mr. Stirling): Mr. Gassner, you said in your testimony [490] that Max Gassner was active in Union activities. What do you mean by that?

A. Well, he seemed to take up all the grievances.

Q. You mean——?

A. Back in 1947 when I come to work.

Q. And since that time, too?

A. Well, he was called in several times.

Q. Called in several times?

A. Yes, by other committees.

Q. You mean when he was not serving on a committee?

A. When he was not serving on a committee.

Q. Would he be called in, or why would he be called in?

A. Well, they didn't have shop stewards. They were elected there one time, but I don't know as they ever functioned.

Q. Well, I am still not entirely sure just what you mean by Union activities. Do you mean that

(Testimony of Michael Gassner.)

he was—do I understand you to mean that he served on the standing committees from time to time, and then when he was not on a committee he would be called in by the committee from time to time?

A. Yes, there were times.

Q. On matters involving——?

A. Grievances, the pilers.

Q. Now you say that there were lots of them, referring to Mr. Tillman's question, I believe it was about disputes. What do you mean by that statement, by "lots"? [491]

A. The pilers' dispute.

Q. And what period are you referring to?

A. Referring from 1947 to 1949.

Q. And what do you mean by "lots"? You say you are referring to pilers' disputes?

A. Yes.

Q. Only? A. Pilers' grievances.

Q. Only? A. There were others.

Q. Well, when you say "lots", lots might mean something to you and something to somebody else. Do you have any idea how many in all of these that you were considering?

A. Well, it seems like there wasn't a month went by but what there wasn't some grievance that had to be settled.

Q. Well now——

A. Such as times we would come out, they wouldn't know where they wanted their lumber piled, whether they want it on their kiln, they wanted it out in the yard.

(Testimony of Michael Gassner.)

Q. Well now, are you including everything that ever came up with respect to the pilers and the Union or the employees whether or not it was taken up through regular grievance channels or not?

A. I didn't get that.

Q. When you say that there was lots of them, referring to grievances, I take it, are you—— [492]

Mr. Tillman: I beg your pardon, my question was lots of disputes, in terms of disputes.

Trial Examiner Winkler: However, Mr. Stirling is examining as to his grievances.

The Witness: I am speaking mostly of the pilers, those grievances that I know of.

Q. (By Mr. Stirling): Well now, are you including in that statement when you say lots of them, are you including instances where maybe one piler or two pilers or one employee or two employees went to the foreman or went to the manager about something without going through your regular grievance procedure?

A. That had to be done sometimes because we had no shop stewards.

Q. Then I take it from your answer that in all these cases when you are referring to lots of them that you are referring, you are including all questions that arose with respect to the pilers whether or not it was taken up through the regular grievance channels or not?

A. All pilers' grievances.

Trial Examiner Winkler: Maybe I can clarify it. Mr. Stirling has this in mind. You testified that

(Testimony of Michael Gassner.)

there were a good number of grievances or disputes between the Union, particularly the pilers, and the Company. Now he wants to know when you speak of all these grievances do you also include those situations where, let's say, a piler went to his foreman and griped about something, but he didn't go through the regular grievance [493]machinery? Do you include that situation where he just goes to the foreman and says he does not like something, or are you talking only of those situations where a grievance was filed and processed through the Union, the Union committee, together with the management committee?

The Witness: No, sometimes they were settled.

Trial Examiner Winkler: Between the foreman and the workman himself; is that it?

The Witness: And the committeeman.

Q. (By Mr. Stirling): Now during all this time, as I understand it, you didn't serve on a committee yourself; is that right? A. That's right.

Q. And all of these disputes to which you refer, to which you are referring, were either settled or dropped?

A. Some are settled, some are dropped, yes.

Q. Now did I understand you to say that Max Gassner was always the spokesman for the Union at the plant?

A. I don't believe I said always.

Q. I think I understood you to say that most of the time.

Trial Examiner Winkler: Perhaps if you refer to a specific period. You came to work in 1947?

(Testimony of Michael Gassner.)

The Witness: 1946.

Trial Examiner Winkler: 1946? My recollection of the testimony is that at least to the time when the witness came to work that Gassner was the spokesman for the men as far as Union [494] affairs are concerned.

Mr. Tillman: My recollection of the testimony is that he testified Gassner was spokesman for the pilers regardless of the Union.

Q. (By Mr. Stirling): Was that the situation then? Was he the spokesman for the pilers; is that what you meant by your testimony?

A. During the period of 1947.

Q. During the period of 1947. Do you know whether or not he served on the committee at that time?

A. Yes, he served on the committee at that time.

Q. Do you know whether or not he served on the committee at all times when he was spokesman for the pilers, as you have termed it?

A. No, I don't.

Q. You mean that he might have been spokesman for the pilers at sometimes even though he was not a member of the committee?

Mr. Tillman: I will object to the question as irrelevant, immaterial.

Trial Examiner Winkler: I suppose the point we are getting at, trying to ascertain, is the extent of Mr. Gassner's union activities, and in my opinion at least it makes no difference whether he is ex-officio member of the committee or whether he is

(Testimony of Michael Gassner.)

acting together with the committee so far as it relates to his activities in the fold. [495]

Mr. Stirling: Do I understand that the objection is sustained then?

Trial Examiner Winkler: I will permit an answer. I am not sustaining the objection. I am just advising counsel how I feel about it.

Mr. Stirling: Will you read the question, please, Mr. Reporter?

Trial Examiner Winkler: Read the question, please.

(Pending question read by the Reporter.)

The Witness: I believe he was at some of them, some of those meetings.

Q. (By Mr. Stirling): From time to time did Max Gassner have individual grievances, that is, grievances that pertained to him himself?

A. Not that I recall.

Q. Now even though you didn't serve on the committee, did you attend some of the meetings that the pilers had with the employers over disputes from time to time?

A. I attended just one meeting.

Q. Just one meeting? A. Yes.

Q. When was that, Mr. Gassner?

A. That was in the spring of 1949, I believe.

Q. So you would not know whether or not there was any criticism of Mr. Christophersen's or Mr. Max Gassner's work by management [496] in any of the other meetings?

A. No, I wouldn't.

(Testimony of Michael Gassner.)

Q. You mentioned in your testimony that you carried your own water to the plant?

A. Yes, that's right.

Q. And that you set your water in the shack; is that right? A. Yes.

Q. Did all the pilers do that?

A. No, it was just Christophersen and Gassner and myself that carried water from Bend.

Q. And you put it in the shack? A. Yes.

Q. Always kept it in the shack? A. Yes.

Q. Did you ever carry it out in your cars to where you were working? A. Yes.

Q. Oh, I thought you said you always put it in the shack?

A. Well, we carried it in the car out to the shack.

Q. Oh, and then you put it in the shack?

A. Yes, or we would set it in the shade.

Q. Then when you went to get a drink of water you would go over to the shack and drink your water; is that right? A. That's right.

Q. Were you here yesterday when Mr. Christophersen testified that [497] he went to the car to get a drink of water? A. Yes.

Q. Did he keep his water in the shack along with the rest of you, ordinarily?

A. The three of us would swap rides; one week one would drive, the next the other man would drive and so-forth, and the man that used his car that particular week would carry the water.

(Testimony of Michael Gassner.)

Q. And put it in the shack when he got to the——?

A. Not always, sometimes it was left in the car.

* * * * *

Q. (By Mr. Stirling): Do I understand from your testimony that the green piling is faster than the dry loading? A. It isn't faster.

Q. It's not faster? A. No.

Q. Well, do I understand from your testimony then that you can pile more green lumber in a given period of time than the same amount of tearing down in the same period?

A. I would not say that.

Q. Well, isn't the——?

A. But your green lumber rate is higher than your dry loading [498] rate so, therefore, you make more money with the green lumber. [499]

* * * * *

Q. (By Mr. Stirling): Now before a carrier picked up a load could you say whether or not the stickers had been placed properly in one end and improperly in the other end?

A. Improperly, how do you mean?

Q. Not straight.

A. Not straight? They probably could if you would walk all around the load and get down and look at every one of them.

Trial Examiner Winkler: You mean it would require a close determination to determine that?

The Witness: Yes. [500]

Q. (By Mr. Stirling): Couldn't you see that the stickers were not straight from just standing in front of the load? A. No, you couldn't.

Q. When you look at a load can't you see the end of the stickers?

A. Will you repeat that again?

Q. When you look at a load can't you see the ends of the stickers, before the carrier picks it up, as it is sitting there?

A. Can you see the end of the stickers?

Q. Yes.

A. Oh, yes, you can see the end of the stickers, but you can't see both sides.

Q. Well, you could by looking at the load determine whether the stickers were one on top of the other or not, could you not?

A. Yes, you could determine that. [501]

* * * * *

Q. (By Mr. Stirling): Now when there was no green lumber to pile were not the pilers always given preference if there was any other work to be done?

A. I wouldn't say that because in 1949, I believe it was 1949, Dant & Russell brought over some men from Tite-Knot and had them working there by the day while we went home.

Q. When was this in 1949?

A. I believe that was in February.

Q. How do you know they were there if you were at home?

A. Because we came down one day, and they were working.

(Testimony of Michael Gassner.)

Q. Is that one day? A. One day, yes.

Q. But wasn't it true, as a general rule, that when there was work to be done and no green piling available that the pilers were given preference to do that work?

A. They give us work, yes.

Q. And was that true from the time you began work there?

A. Well, they never did object to us not working.

Trial Examiner Winkler: I wonder if I may clarify this?

Mr. Stirling: I don't get your answer. Excuse me.

Trial Examiner Winkler: Just to clarify for counsel, when there was no contract work to be done, and let us assume there was day labor work available, did you consider it or did the pilers consider it as part of their duty and part of their [503] job to do this day labor work? Do you understand my question, first?

The Witness: Did we consider?

Trial Examiner Winkler: Was it part of your job to do day labor work at times when you work?

The Witness: Well, we could either do that or go home.

Trial Examiner Winkler: Well, that's what I mean. I mean, are you telling me it was not required that you do the day labor work?

The Witness: We was not required to do the day labor work.

(Testimony of Michael Gassner.)

Q. (By Mr. Stirling): But it was available to you if you wished to do it?

A. It was available to us.

* * * * *

Q. (By Mr. Tillman): You mentioned on cross examination that not a month would go by but what the pilers would have some dispute. What type of disputes would they have with management, what —over what, I mean, what would it involve?

A. Well, it would involve they wouldn't know where they would want their lumber. We wouldn't have carrier service, or they wouldn't have the stickers out to where the shop lumber would have to be piled. [504]

Q. Any other types of disputes you can think of?

A. Not right now.

Q. Did some of them involve wage scales or rates?

A. Yes, some involved like the 8-quarter.

Q. Now, Mike, were you at the plant on July 13th, 14th and 15th when these, when Max and Henry were working on this dry loading?

A. I was not. [505]

* * * * *

Q. After Parker became foreman did he make it a practice of coming around and looking around each pile that was made, unit piled?

A. He would come by and look. I don't know whether it was a practice. He would come by.

(Testimony of Michael Gassner.)

Q. Well, did he just drive by or did he stop and examine? A. He would walk by. [508]

* * * * *

TIM SULLIVAN

a witness called on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Tillman): State your name, please.

A. Tim Sullivan.

Q. And your home address?

A. 225 South Six Street, Klamath Falls.

Q. Oregon? A. Oregon.

Q. What is your position, sir? [509]

A. I am president of the Klamath Basin District Council.

Q. And what area does that council have under its jurisdiction?

A. From McCloud, California, to Heppner, Oregon.

Q. What does the council comprise?

A. The council comprises designated area who cover that particular location.

Q. How long have you held that position?

A. 1941.

Q. Is the council comprised of any locals?

A. Yes.

Q. How many locals in that council?

A. Nine local unions.

Q. What affiliation are they?

(Testimony of Tim Sullivan.)

A. They are an affiliate of the District Council, IWA, CIO.

Q. Have you had any experience with the IWA prior to your present position? A. Yes.

Q. And what was your job before that?

A. I was president of the local union here in Bend, Local 6-7.

Q. For what period of time?

A. 1939 to 1940.

Q. Did you have any other experience with the IWA before that?

A. Shop steward for the job branch in Brooks-Scanlon employees.

Q. Where are they located? A. Bend.

Q. Approximately when were you shop steward?

A. 1939 to 1940.

Trial Examiner Winkler: Are you qualifying the witness as an expert in this field?

Mr. Tillman: Yes.

Trial Examiner Winkler: As an expert in the field of unionism?

Mr. Tillman: Unionism in the lumber industry.

Trial Examiner Winkler: Well, I accept him for an expert.

Q. (By Mr. Tillman): In the territory with which you are familiar within your particular council are contract pilers commonly found throughout the industry?

A. Not so much now as they were formerly.

Q. And by formerly how far back do you mean to go?

(Testimony of Tim Sullivan.)

A. Oh, approximately sometime in the late '30's.

Trial Examiner Winkler: May I just clarify that. You mean since the late '30's there have not been very many contract pilers?

The Witness: No, not as many.

Trial Examiner Winkler: Not as many?

The Witness: Yes.

Q. (By Mr. Tillman): Those contract pilers who still exist or did exist in your experience, how did their rate of pay compare with any other group of lumber workers? [511]

A. Back in the '30's their rate of pay, take home pay, would be approximately two and a half or maybe three times more than common labor.

Q. How about the comparison with skilled labor within the mill?

A. It would be higher than skilled labor.

Q. It would be higher than skilled labor. Did that ratio to common labor change since the '30's?

A. Yes.

Q. About what would it be at the present time?

A. Common labor today is approximately $12 a day, and the average lumber piler today, if he can average $18, that is, for the entire year, he is doing pretty good.

* * * * *

Q. Now in your experience working in this industry has there been any industry practice to, in effect, provide jobs for contract pilers when piling had run out?

A. It's an old custom in the lumber industry,

(Testimony of Tim Sullivan.)

especially in this area, at least the one I am familiar with, that whenever the [512] work becomes slack that due to the fact that lumber pilers are the premium, that the employer will see to it that they be given some kind of day work, if they so desire, for the purpose of keeping them on the job so they can have them available when they need them.

Q. Has that been true in the Bend area?

A. Yes.

Trial Examiner Winkler: What was the last question?

(Last question read.)

Trial Examiner Winkler: Was it in which area?

Q. (By Mr. Tillman): Has that been true in recent years in the Bend area? A. Yes.

Mr. Tillman: I have no further questions.

Trial Examiner Winkler: Mr. Babcock?

Examination by Mr. Babcock:

Q. Tim, do you know whether there has been any practice, custom in the Bond area with respect to what work, what amount of work is required of the contract pilers when they are doing day work?

A. The question is so senseless that it's actually laughable to anybody who is familiar with the lumber industry.

Q. Well you realize I am asking it for the members of the Board in Washington, among others.

A. There is no limit set for contractors who get day labor for the purpose of keeping them on the job to have them available. [513] In fact, they are just more or less put on, let's call it a pension to

(Testimony of Tim Sullivan.)

keep them there, to have them when it's—when they are needed.

Mr. Babcock: That's all.

Trial Examiner Winkler: I would like to ask a question. Mr. Sullivan, the two men that were discharged in this case, I suppose you know that there is some talk about the fact that on the three days in July, 1949 had tore down, oh, approximately 48 to 50 thousand board feet of miscut lumber. Could you say on the basis of those few facts alone that you would call these men being guilty of loafing on the job?

The Witness: No, those men——

Trial Examiner Winkler: Considering the fact that they are contract pilers and also considering the fact that they were doing day labor at the time?

The Witness: Those men were not on their regular job when they were discharged. They were on temporary job. The purpose was to keep them around here to work as contract work when there was contract work to be done, and, therefore, I would not say that those men were loafing in the particular three days due to the fact that they were doing temporary work.

Trial Examiner Winkler: My question is, however, would you say that 50,000 feet for three days was a loafing figure? Do you understand what I mean?

The Witness: You mean if that was an employee's regular [514] job?

Trial Examiner Winkler: Yes.

(Testimony of Tim Sullivan.)

The Witness: Well, that would depend quite a lot in the kind of lumber that they were handling. Some species of lumber probably, if it was a regular employee's job, they could tear down more than that, while there may be other species that it would be difficult to handle that might not be loafing on the job or loafing——

Trial Examiner Winkler: Mr. Stirling?

Cross Examination

Q. (By Mr. Stirling): In other words, I understand from your testimony, Mr. Sullivan, that it would be perfectly all right for these men to come to work on this day labor rate and loaf the entire day? You say they are on a pension?

A. Perhaps you have got me wrong, Mr. Stirling. It would be perfectly all right for those men to come on on a temporary basis as long as the foreman did not object or criticize what they were doing. It is my opinion, Mr. Stirling, that the foreman's duty under such circumstances, if he thought they were not doing a sufficient amount of work, would be to tell them to go home and stay home until the regular job was open.

Q. I don't think you answered my question.

A. I tried to, Mr. Stirling. [515]

* * * * *

Q. (By Mr. Stirling): Have you done any dry loading yourself?

A. No, I haven't. I wasn't strong enough to do it.

(Testimony of Tim Sullivan.)

Q. How long did you say you have been the president of the council?

A. 1941 with the exception of a couple of years in the service I was gone.

Q. Were you president of the council when a contract was—or were you active, were you—strike that—are you acquainted with the Union contract history at Dant & Russell?

A. I wasn't present when the first contract was signed.

Q. What are you referring to by the "first contract?"

A. I believe the first contract was signed in 1945. I was in the service then.

Q. And was that after the mill was rebuilt out here? A. Yes, I believe.

Q. Do you know whether or not Dant & Russell had a contract with the Union prior to that time, before the mill burned down? A. No.

Q. So that they had been under contract with the Union since some time in 1945?

A. Yes. [517]

* * * * *

Q. Have you attended meetings at which management was present? A. Yes.

Q. Committee was present? A. Yes. [519]

Q. And at which criticism was voiced by management of the work of Christophersen and Gassner?

A. Well, I wouldn't say that it was exactly

(Testimony of Tim Sullivan.)

against Christophersen and Gassner, but there was criticism voiced of the lumber pilers.

Trial Examiner Winkler: May we fix the time, please?

Q. (By Mr. Stirling): Was that a number of different meetings? A. Oh, yes.

Q. During 1948 and 1947?

A. Yes, I guess it would be 1947 and 1948.

Trial Examiner Winkler: 1949, too?

The Witness: Not so much in 1949, I don't think.

Q. (By Mr. Stirling): Isn't it true that at one of those meetings which you attended that you told Mr. Dant in the presence of the entire committee and in the presence of Christophersen and Gassner that if they didn't start working properly that Mr. Dant would be warranted in discharging them?

A. In no such words. I will try and repeat what I told Mr. Dant at that particular meeting, and perhaps other meetings. I tried to explain to Mr. Dant that in my investigation of the amount of trouble that he had in that particular operation——

Trial Examiner Winkler: You are talking about the pilers?

The Witness: Well, the entire operation.

Trial Examiner Winkler: Oh, his entire plant.

The Witness: That 99 per cent of it was largely due to mismanagement. I pointed out where one of his managers——

Q. (By Mr. Stirling): Excuse me a minute, at what period are you referring to at this last?

A. I am referring to after Mr. Anderson quit

(Testimony of Tim Sullivan.)

and while Mr. Redman and Cook were managers. I tried to point out to Mr. Dant the mismanagement of the operation, told him that it was pretty hard for Mr. Dant to realize the situation by just flying into Redmond and taking a look at the thing and talking to his management and then flying back again, pointed out to him where one manager went so far as to build a shed, laid the concrete, and after so many feet of concrete was laid we found out, or at least somebody found out that it was laid on the property of the City of Redmond and not on Mr. Dant's property at all. I tried to explain to Mr. Dant that what he needed was either new management or a personnel man who could take care of the situation, and that if the proper management was there, that then if the pilers didn't do their work while they were piling, that then he would be justified. Evidently Mr. Dant agreed with me because he did get new management.

Q. Well, isn't it so that at these meetings Gassner and Christophersen took up so much time with their individual beefs that you and the rest of the Union committee told them that they would have to give the rest of the organization a chance to talk about its matters? [521]

A. The major portion of the beefs that arose arose from the piling department due again to the fact of mismanagement, and to get the matter straightened out they had to bring up those beefs.

Mr. Stirling: I don't think he answered my question.

Trial Examiner Winkler: Just read the question again to the witness.

(Pending question read.)

The Witness: No, that is not true, Mr. Stirling. The unfortunate part of it was that when we did go in with a beef relative to the piling, especially if Mr. Dant was present, that we spent so much time talking about Mr. Dant's grievances relative to 4-inch and 6-inch that wasn't piled, that should be piled according to his ideas, that we did tell both parties in one particular meeting that we had other things to discuss as well as this piling.

Q. (By Mr. Stirling): Then there were grievances by management at these meetings, or at least complaints, as to the piling that was being done?

A. The piling that was not being done, not the piling that was done.

Q. No, I asked you as to the piling that was not being done and as to the manner that the piling that was being done.

A. No, not as to the manner in which the piling was being done.

Q. Were there no criticisms at any of those meetings about the [522] way the stickers were being placed in the piles?

A. Never heard of any, never heard of any.

Q. Not one?

A. Not one. The only arguments was lack of stickers by the pilers themselves.

Trial Examiner Winkler: Off the record.

(Discussion off the record.)

Trial Examiner Winkler: On the record.

(Testimony of Tim Sullivan.)

Mr. Stirling: I think that's all I have for now. If I might recall him right after lunch I would like to. Could I have that privilege?

Trial Examiner Winkler: Yes. I have one question, Mr. Sullivan. Are you familiar with the general firing practice in this area, in the labor area in Bend?

The Witness: Yes.

Trial Examiner Winkler: Would you know whether there was any practice about firing men before warning them?

The Witness: Yes, sir.

Trial Examiner Winkler: Is there any practice dealing with that subject?

The Witness: They usually warn them first. There is nothing in the contracts that—in some contracts, yes, but in most, in some contracts no, but it's the common practice that they are warned first before they are fired, and usually a foreman not alone warns the employee fired but he will also warn the [523] union in regards to the employee's work.

Trial Examiner Winkler: You mentioned before the fact that the practice is to give the contract workers this day work in order to keep them available.

The Witness: Yes.

Trial Examiner Winkler: Are you familiar with any situations other than the one we have before us where contract workers who were doing day work were discharged because of the manner in which they did it, day work?

(Testimony of Tim Sullivan.)

The Witness: Never, never heard of it before.

Trial Examiner Winkler: I want to qualify you a bit in that respect. Are you familiar with those situations where contract workers had done day work?

The Witness: Yes.

Trial Examiner Winkler: You are?

The Witness: Yes.

Trial Examiner Winkler: Again the answer is that never in your experience have you come across a situation where an employer has discharged a contract worker who is doing day work?

The Witness: That's right.

Trial Examiner Winkler: And for reasons of performance of his day work?

The Witness: That's right.

Trial Examiner Winkler: Mr. Tillman, have you anything?

Mr. Tillman: No. [524]

Trial Examiner Winkler: Mr. Stirling?

Q. (By Mr. Stirling): Would you know of every instance of a discharge of a contract worked in this vicinity?

A. Yes, I would be familiar——

Q. Even if they are non-union?

A. Not union, not the union or——

Q. There are a number of non-union plants in the area, are there not? A. No. [525]

* * * * *

Trial Examiner Winkler: On the record.

(Testimony of Tim Sullivan.)

Q. (By Mr. Stirling): These complaints by management that you heard with respect to work that the pilers had not done, were they made in the presence of Hank Christophersen and Max Gassner? A. Yes.

Mr. Stirling: That's all I have.

Trial Examiner Winkler: In that connection were complaints made about Christophersen's work and Gassner's work?

The Witness: No.

Trial Examiner Winkler: They were made about the pilers generally?

The Witness: Yes.

Trial Examiner Winkler: Now I would like to ask you just a further question in connection with that other matter. Would you be generally familiar with all grievances that come out of your locals?

The Witness: Especially discharges, I would.

Trial Examiner Winkler: I am talking about, I mean the discharges.

The Witness: Yes, yes.

Trial Examiner Winkler: In other words, if a contract worker had been discharged for performance of his work as a day laborer, that ordinarily is a matter that would be covered by a grievance; is that correct?

The Witness: Yes. [526]

Trial Examiner Winkler: And you say that that type of grievance would come to your attention?

The Witness: Yes. [527]

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CARL SVANBERG

a witness called on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Tillman): What is your name?

A. Carl Svanberg.

Q. What is your address?

A. Bend, Oregon.

Q. What is your occupation, Carl?

A. I am working down at Brooks-Scanlon lumber mill.

Q. What kind of work do you do there?

A. I am working down in the planer at the present time.

Trial Examiner Winkler: Working in the what?

The Witness: In the planer.

Q. (By Mr. Tillman): How many years have you worked in the lumber industry?

A. I worked there since 1924.

Q. And what various jobs have you held in the industry during that time, not where you have worked, but what kind of work?

A. The most been loading lumber, dry lumber.

Q. How many years of dry loading lumber experience would you say [528] you have had?

A. Well, something better than 15 years.

Q. In your work as a dry lumber loader, Carl, have you worked on a contract basis?

A. Practically all the time.

Q. Where have you spent the 15 years or better working as a dry loader, what area?

(Testimony of Carl Svanberg.)

A. At Brooks-Scanlon Lumber Company most of the time.

Q. And is that mill located here?

A. That's right, in Bend.

Q. Any other mills around here?

A. I worked at Shevlin-Hixon lumber mill.

Q. In size how, what size are these two mills, I mean compared to other mills?

A. Oh, that is pretty big sized mills.

Q. Are there any bigger ones than that around here? A. Not what I know of.

Q. In addition to loading, dry loading on a contract basis, have you had some experience dry loading on a day basis? A. Yes, I have.

Q. Now based upon all your experience as a dry loader, what would you estimate to be a common day's work for a team of dry loaders working by the day?

A. It depends to a great deal on the type of lumber you are loading. I would say that between 15 and 20 thousand a day, all [529] depends on the type of lumber.

Q. In your experience have you heard of anyone being discharged, any dry loader being discharged when he piled as much as 15 or 20 thousand, or, I mean when the team did?

A. No, I haven't heard any others mentioned, I haven't heard.

Q. When you gave that figure, 15 or 20 thousand, was that for the team or for per man?

(Testimony of Carl Svanberg.)

A. No, that was for the crew together, for the team.

Q. For the two members of the team together?

A. That's right.

Q. Now when a team is dry loading and they are doing it at a contract basis, what might be the common day's work for dry loading?

A. Well, where I have the most experience at Brooks-Scanlon Lumber Company here, and I would say, well, I would say around 50,000, probably a little bit more, a little bit under, all depends on the conveniences you have.

Trial Examiner Winkler: Was that 15 or 50?

The Witness: 50,000.

Trial Examiner Winkler: 50,000?

The Witness: Yes, it's a contractor because you usually get better lumber then than you do when you load by the day.

Trial Examiner Winkler: Would you read that answer, please?

(Last answer read.) [530]

The Witness: I should probably explain this, as it was the common case down at Brooks Lumber Company that they loaded the poor lumber by the day, by the hour, and the good lumber by contract.

Q. (By Mr. Tillman): Now is there any other reasons which might account for the difference between the amount day laborers would turn out and the contract team would turn out besides the fact that they had no better lumber?

A. Well, you must load more by the contract or

(Testimony of Carl Svanberg.)

you wouldn't make anything hardly. You are paid so much a thousand, and you are usually working just as hard as they can.

Q. And when you are working on day labor, is it customary to work as hard as you can?

A. No, it wasn't down there, I know. They did not expect it.

Trial Examiner Winkler: What was that last?

The Witness: I say they did not expect the work.

Trial Examiner Winkler: The Company did not expect you to work as hard?

The Witness: No.

Q. (By Mr. Tillman): Is that true of all companies where you have done dry loading?

A. Yes, it is.

Q. In your several years experience in the lumber industry have you done any green piling?

A. Yes, I have done some. [531]

Q. And in addition to having done some work have you been around where green pilers are working? A. Yes, I have.

Q. Would you state whether or not you had noticed any practice in the industry as to furnishing work to green pilers when there is no piling to be done?

A. Yes, Brooks-Scanlon used to do it. They used to give them something to do if they was out of green lumber.

Q. Any other place you know of that has done that?

A. Yes, Shevlin-Hixson also done it when I was

(Testimony of Carl Svanberg.)

working over there because I worked with the pilers at that time.

Mr. Tillman: I believe that is all.

Trial Examiner Winkler: Mr. Babcock?

Mr. Babcock: No questions.

Trial Examiner Winkler: Mr. Stirling?

Cross Examination

Q. (By Mr. Stirling): How long has it been since you have done any dry loading at a day labor rate, Mr. Svanberg?

A. I think that's about four years.

Q. Four years?

A. Uh-huh, I transferred into the planer at that time from the yard.

Q. When you say that the Company did not expect you to work as hard on day labor rate as on the contract rate do I understand you to mean by that that it would be all right for you to loaf? [532]

A. No, I wouldn't say that. You probably understand, boys, that in contract they pay so much per thousand, and the men is working harder, and as I stated before, that was the practice at Brooks-Scanlon that you got poorer lumber by the day, and, consequently, you can't load so much. It couldn't be done.

Q. But working at the day labor rate then, you are still expected to put in a steady day's work?

A. Well, to state the fact at Brooks-Scanlon yard, if we ever worked by the day, the contractors we used to quit early when we was contracting, 20

(Testimony of Carl Svanberg.)

minutes, a half hour early, and we done the same thing if we worked by the day so——

Q. That's at Brooks-Scanlon?

A. That's right, it was—what I mean, those who worked contracting, and some days there was no contract so they put us out by the day, but we always went home the same time. There was no changes.

Mr. Stirling: I wonder if the Reporter would read the question I asked him. I don't think this answer was responsive.

(Last question read by the Reporter.)

Mr. Babcock: I submit the answer was responsive.

Trial Examiner Winkler: Would you repeat the question, please?

(Last question read by the Reporter.)

The Witness: Well, I can see that probably the answer was not correct to your question. Well, I might say that we [533] didn't work so steady. We took our time when we was working by the day, especially the contractors when they worked by the day, because they could always put out enough, just as much any day producing when working by the day steady.

Q. You mean you were working the same as the ordinary day crew would work at a day labor rate, ordinarily? A. Yes, that's right.

Q. Is that what you meant by that?

(Testimony of Carl Svanberg.)

A. The same amount of lumber, approximate the same amount.

Mr. Stirling: That's all.

Q. (By Mr. Tillman): With respect to those last two questions, as contract pilers—I mean as contract dry loaders were you capable of working faster than most dry loaders who were working by the day only?

A. Now you must work faster because here's the thing, that they hire men, put them out dry loading by the hour, by the day, and they must have some experience before he can contract.

Q. Well, let me put another question. If a team —if as a contract day loading team you were one day put on day work alongside of a day crew who did nothing but day work, would you have to work as steady as that day crew to get out the same output or the same amount of loading?

A. No. [534]

* * * * *

MAX GASSNER

a witness called on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Tillman): What is your name?

A. Max Gassner.

Q. Where do you live?

A. 1245 Cumberland, Bend, Oregon, a member of Local 6-7, Bend, Oregon.

(Testimony of Max Gassner.)

Q. Now, Max, what is your occupation at the present time?

A. I am working for the Bend Lumber Products.

Q. And what is your job?

A. At Bend, I would say it was kind of a handyman.

Q. Were you ever in the employ of Dant & Russell? A. Yes.

Q. And over what period of time?

A. From December 22, 1944, until the 18th day of July, 1949.

Q. Now in all of that time, Max, what was your position with the Company, what title or what job did you have?

A. I hired out as a lumber piler. [535]

Q. And did you change during the time you were working? A. No, sir.

Q. You were a lumber piler all the way through?

A. Yes.

Q. How did your employment come to end with Dant & Russell? A. By discharge.

Q. Do you remember how you were notified of that discharge?

A. Yes, the only notification I got on the morning of the 18th, we reported to work.

Q. You and who else?

A. Hank Christophersen, Mike Gassner, and myself.

Q. And what happened that morning?

A. Mike got out of the car which he was driving,

(Testimony of Max Gassner.)

his car, to punch the cards which we was getting ready to go to work, to punch our time in.

Q. Was Mike going to punch all three of them?

A. He started to. Parker stood at the steps and he says, "I'm sorry, I got bad news for Hank and Max. I have got the checks awaiting for them." Christophersen asked him, "What is the reason?" He says, "You didn't put out enough work when you loaded the dry lumber out." That was the end of the Christophersen discussion. I told Parker, I asked him, I says, "You think you are going to get away with it?" He said, "No, but I am going to try it."

Q. I didn't quite get what you said Parker said. When you said, [536] "Do you think you are going to get away with it," what did Parker say?

A. That was all he said, "I am going to try it."

* * * * * [537]

Q. I see. Now at the time that you were hired in was the Company bargaining with or dealing with any unions?

A. Not that I know of.

Q. After you were hired did you engage in any union activities?

A. After I—after I went to work down there the boys come around at which time—there was only three members that belonged which were all from Local 6-7 here. Some of the boys that went to work there, they wanted to get organized.

Q. Did you take any part in that?

A. Yes, I did.

(Testimony of Max Gassner.)

Q. What did you do?

A. I solicited cards amongst the members and got them signed up through our business agent.

Q. Do you remember approximately when you were doing this organizing work?

A. I would say it was along in February, March of 1945.

Q. Do you remember whether the Company and the Union men entered into a contract after that?

A. Yes, I do.

Q. About how long after?

A. I think it was in June, sometime in June.

Q. That same year?

A. That same year that the contract was signed.

Q. Now while you were employed at Dant and Russell did you hold any position in the Union?

A. Yes.

Q. And what position did you hold?

A. Committee, on the stand committee.

Q. Over what period of time or periods of time on the standing committee, were you on the standing committee?

A. I was on the standing committee from the time they signed the contract in 1940—the spring of 1948 when we changed committees, and I resigned our contract.

Q. From June of 1945 to June of 1948?

A. Yes.

Q. Did you have any—did you take any part in the negotiation of that first contract in 1945?

A. I don't believe I did. [539]

(Testimony of Max Gassner.)

Q. Was there a standin committee before that contract was negotiated?

A. No, there wasn't.

Q. And what was the function of the standing committee when you were first on it in 1945; what did it do; what was it?

A. Well, everything went along smooth under the management we had.

Q. No, I mean what was the purpose of having the standing committee? Why did you have the standing committee? What were they supposed to do?

A. Well, they were supposed to represent the Union.

Q. In what?

A. In grievance or in negotiations, in any negotiations.

Q. I see. Now in the period of time of which you were on the committee were you at any time on it at the same time with Henry Christophersen?

A. Yes, I was.

Q. In June of 1948?

A. In June of 1948, yes. I mean, not June, 1948, June of 1949.

Q. However, in June of 1948 did you run for standing committee? A. No.

Q. Did you run for election? [540]

A. No.

Q. I want to direct your attention to a time out there when manager Redman was in charge of the

(Testimony of Max Gassner.)

plant. Do you recall the pilers having any disputes or beefs with manager Redman?

A. Yes, I did.

Q. What is the first dispute you can recall?

A. The first dispute was over the sugar pine.

Q. And what was the background of that dispute, I mean, what led up to that dispute?

A. Well, they wanted the sugar pine piled out there which come out there in all lengths and widths to pile foundations, which we called the foundations. They were 16 foot, and you would start to pile with 16 foot lumber. The next load you would get would be probably 6, 8, 10's, see.

Q. Yes.

A. The next load you would get, you would have 16 supposed to go on top of that. It would give us a hang-over and spoil thousands of dollars worth of lumber.

Q. So that did the pilers, why did they beef then on that occasion?

A. Because it was—you couldn't pile it to make a satisfactory job.

Q. Did the pilers have any suggestion?

A. Yes, we suggested to them they sorted the lengths and made shorter pile bodies or foundations. [541]

Q. Who was it that made the suggestion, and who did you make it to?

A. Me and Hank Christophersen made it to Redman.

Q. I see. Do you recall taking up any other disputes or beefs with Mr. Redman?

(Testimony of Max Gassner.)

A. No, I do not.

Q. Do you recall any incident involving the tracks at the kiln? A. Oh, yes.

Q. What was the incident?

A. Well, they built new kilns there, and there was one side there that the pilers couldn't get in only on one track unless they had to re-handle the lumber twice, see.

Q. Which track couldn't they get into?

A. The east side looking north at the kiln.

Q. How many tracks were there?

A. Four.

Q. And were there tracks running in the same direction? A. Yes.

Q. If you were standing looking at the kiln then starting from the right-hand side, which track would it have been that was causing trouble?

A. The one to the right.

Q. Well, supposing we call the one on the far right number 1, and then the next one 2, 3, 4, which?

A. It would be number 1. [542]

Q. Number 1 track was causing the trouble?

A. Yes.

Q. What was the difficulty you were having?

A. Well, they didn't have enough clearance there so that the truck could get in there to dump the lumber into the second rack, and in order to pile for the second track you had to re-load that lumber dumped there on the ground, put it on carrier blocks, move it over with the carrier on the inside track in order to pile those cribs.

(Testimony of Max Gassner.)

Q. Then it took two piling operations instead of one?

A. We was to handle lumber twice, but Redman would not give us the pay for handling the lumber twice.

Q. I see, well what happened, what did the pilers do then on that?

A. We told them that if they would build a platform out there so that the platform was level with the rail so that the truck could get over and dump his lumber over there, that was all that was required, or else extend the other track out.

Trial Examiner Winkler: Who is the "we" that told them this?

The Witness: What?

Trial Examiner Winkler: You say "We told them." Who is "we"?

The Witness: Me and Hank Christophersen.

Trial Examiner Winkler: You and Hank Christophersen. [543]

The Witness: And as far as that goes, the rest of the pilers.

Q. (By Mr. Tillman): Who did you tell that to?

A. Redman.

Q. Was any action taken by Redman after that?

A. Yes, there was.

Q. What did he do?

A. They built a dock there so that they could drive over it and dump the lumber in on a second track.

(Testimony of Max Gassner.)

Q. Did that solve the difficulties, did that solve the difficulties you had? A. Yes.

Q. Now when manager Cook took over from Redman do you recall, if any—the pilers having any disputes or beefs with him?

A. Yes, we did.

Q. What ones do you recall?

A. For one thing, he didn't know—the lumber was piling up out there.

Q. In where?

A. In the yard, around the kilns, and they didn't know where they even wanted to pile it.

Q. Who didn't know?

A. Cook and Pete Troutman.

Q. And as result of their not knowing where they wanted it, what happened? [544]

A. Well, we asked them where they wanted it. Well, "We don't know, we don't know just what we want to do with it." We would stand around there for two hours, and then we finally decided we would go home and let them figure out what they were going to do with it.

Q. How many, how many people did you ask where they wanted the lumber to be piled?

A. Percy Cook and Pete Troutman.

Q. Who was that?

A. Troutman, Troutman was the foreman, supposed to have been the foreman in the yard.

Q. Who did the asking?

A. Me and Hank Christophersen.

(Testimony of Max Gassner.)

Q. How many crews, piling crews were there at that time? A. There was three.

Q. And when you say "We went home," how many of the three crews went home?

A. They all went home.

Q. Reported for work the next day?

A. Yes, we did.

Q. What happened the next day then on that subject? A. He told us.

Q. Who told you?

A. That we were going to pile on the kiln.

Q. Who? [545]

A. Cook, and that day he made arrangements out in the yard that we could pile in the yard, but he says on this, "Don't ever let this incident happen again."

Q. Who was he telling that to?

A. Me and Hank Christophersen. He says, "You will go down the road."

Q. Did you fellows have any comment from that statement?

A. We told him we tried to do the right thing, if he couldn't manage us then they should get somebody else that could manage us.

Q. Did you have any difficulty in, involving your pay scale with Mr. Cook? A. Yes, we did.

Q. When, approximately when did that happen?

A. That happened when they started, switched from piling with machines, square piling as it is brought up here, to unit piling.

(Testimony of Max Gassner.)

Q. What happened then on the occasion that caused a dispute?

A. Well, as I got it, I didn't hear all of it, this picture entered in with the five veterans that had two weeks vacation coming with pay which they were entitled to under our contract, that wasn't paid.

Q. Well, how did—how were the pilers affected by anything at this——?

A. Well, that's when it come to the point of the contract, see. [546] Cook, he took it upon himself. Under our contract all wages must be negotiated through the Union. It calls for 60-day notice of either party, change of wages.

Q. Well, was any change made in there?

A. There was a change made, but the Union wasn't notified. Cook took it upon him to cut the wages from $1.12 to 13c per thousand, he took it upon himself to 87 cents per thousand.

Q. When did you find out that he had cut it down to 87?

A. Oh, it was sometime in the latter part of September.

Q. How did you find out?

Trial Examiner Winkler: September when was this?

Mr. Tillman: September, 1948. How did you find out?

A. On our pay checks.

Q. (By Mr. Tillman): Is that the first notice you had? A. Yes.

(Testimony of Max Gassner.)

Q. What did the pilers do when they found out the checks had been cut?

A. We had a beef then.

Q. Who carried the beef to the management?

A. Hank and myself.

Q. Who did you see?

A. We seen Percy Cook.

Q. And do you remember what you told him or what was said?

A. He told us that he was running that layout from now on. We told him we had a contract that was covering that part of it [547] and that we thought that we had a right to come in and negotiate those wages.

Q. Did Cook have any other comments?

A. That was all he commented, that was all the comment he had, as near as I can remember.

Q. How, there has been testimony here about a dispute involving Mr. Clark when some 8-quarter lumber was involved. Do you recall that incident?

A. Yes, I do.

Q. Did you take any part in that?

A. Not in the office, that is——

Q. No, I mean not in the office, but did you take any part in that dispute? A. Yes, I did.

Q. What did you do about it?

A. We come down there one morning when they had this lumber out. They dumped it off to one side, and they had two—a spare crew out there working on it, and Mr. Clark told him, he says—or they jumped Mr. Clark. He come by and they——

(Testimony of Max Gassner.)

Q. Who is they?

A. Otto Bauer and Lester Shelhorn.

Q. All right, were you there?

A. No, we wasn't, we hadn't got to the job yet.

Q. We only want to know what you did.

A. And they told us, Mr. Clark had told them, told—they told [548] him that they didn't think that we would like it, them going in there and taking that lumber and transferring it from truckloads into carrier loads to take up to the planing mill to resaw into 4-quarter, bring it back and then tell the pilers to pile it in unit loads and sticker——

Q. Did the pilers like it?

A. No, they did not.

Q. What did you do, if anything, then?

A. We went over to a shack there where we usually parked our cars and left our water. Mr. Parker was standing right there when I walked across the street and called up the business agent.

Q. Did Parker know what you were going to do when you went? A. Yes, he did.

Q. How did he know?

A. I imagine he knew it. He was standing right there.

Q. How could he know what you were going to do if you——?

A. Well, I wouldn't—I told them I was going over there to call up the business agent.

Q. Was Parker there when you told them that?

A. Parker and Hank Christophersen were standing right there.

(Testimony of Max Gassner.)

Q. Did the business agent come out?

A. Yes, he did.

Q. Now, when you were hired at Dant & Russell who was your partner? A. Alfred Erickson.

Q. And did you have any other partners, I mean, any regular [549] partners during the time?

A. No, I didn't.

Q. Then for how long did you continue working with Erickson?

A. With Erickson, I worked with Erickson from 19—from December 22, 1944 until the 18th or 14th of June, I believe, that's the time he got hurt. No, I wouldn't—I can't quite remember the day that he got hurt.

Q. In what year was that June that he got hurt?

A. 1949.

Q. When Erickson got hurt then was he able to work? A. No, he wasn't.

Q. Did you get new partners?

A. No, I didn't.

Q. Did you try to get a new partner?

A. Yes, I did. [550]

* * * * *

Q. (By Mr. Tillman): Now, Max, you took a vacation in 1949, did you? A. Yes, I did.

Q. And when did you go on your vacation?

A. We left the operation on the, I believe it was the first day of July.

Q. Do you remember what day of the week it was? A. On Friday.

Q. Who all left at that time? [553]

(Testimony of Max Gassner.)

A. Me and Hank Christophersen and Mike Gassner and myself.

Q. Is there any reason why the three of you left at that particular time?

A. Well, we all agreed that we would take our vacation together.

Q. And why did you choose that time?

A. Do you mean what——?

Q. Why did you pick that time to take a vacation?

A. Well, that was, it was, always had been taken the previous year, and there was no lumber coming in. The mill had shut down for two weeks.

Q. What mill?

A. Hitchcock mill, which Mr. Dant buys his lumber from.

Q. Do you know when they shut down, when they shut down for two weeks?

A. I believe, I believe they shut down that same day.

Q. Now——

A. I don't exactly remember.

Q. Did you have any discussion with Clark that day concerning getting a partner when you came back to work? A. Yes.

Q. Where did it take place, where did the discussion take place?

Trial Examiner Winkler: Were you together?

The Witness: Yes.

Trial Examiner Winkler: Is this July 1?

The Witness: That took place in front of the office. [554]

(Testimony of Max Gassner.)

Q. (By Mr. Tillman): And who was there when you had that discussion?

A. Hank Christophersen, Mike Gassner, and myself.

Q. And what—just give us the conversation, tell who said what and so on.

A. Well, Mr. Clark come to the car. We punched out. Mr. Clark come to the car and he says, "Well, I hope you have a good vacation." I said, "I hope so, too, but", I said, "I want it to be understood that I want a partner when I come back from my vacation."

Q. Go ahead.

A. He says, "I wouldn't be too sure about that."

Q. And anything else said?

A. And he was kind of peeved about it, and Hank, he brought the subject up, he says, "Well, it's all right to have that fifth man out there, but the Company should pay his wages and not take it out of the other pilers' out of—" which would have left four pilers getting the pool wages.

Q. Did Clark have any comment on that?

A. He said, "The lumber costs too damned much now to get a piler." [555]

* * * * *

Q. Now when was the next time you came back to the plant?

A. I never went back to the plant until, I would say, the 11th, 12th and 13th.

Q. And what was the occasion of going back on the 13th?

(Testimony of Max Gassner.)

A. Well, Hank, he come back from his vacation on the 12th, and he went down there and got his pay check which he had coming from the 10th, and he made arrangements to work.

Q. I see, and what work were you assigned to then when you reported on the 13th?

A. We was assigned to loading out those three square piles and piling up what green lumber that come in into this dry loading [556] and the piling was——

Q. Now, you say there were three square piles there?

A. Well, that's what it was told to me. I would say it was about two and three-quarters or two and two-thirds.

Q. Would you describe, Max, the condition of the lumber in those three piles that you loaded out those three days? A. Would I describe it?

Q. Yes.

A. Well, prior to the time that Redman was in charge of it they never did get that lumber because Mr. Hitchcock, rather than fool with it up there, he would give it to all the farmers in the community, just give it away.

Q. You mean prior to Redman that Dant & Russell didn't buy that stuff? A. No.

Q. What kind of stuff was it?

A. All miscuts.

Q. How would you describe miscuts?

A. Well, there was a lot of it that was thick on one edge, thin on the other edge. Some of it was

(Testimony of Max Gassner.)

tapered on one end of it 6-quarter, on the other end it might be half an inch, see, which was not a uniform lumber.

Trial Examiner Winkler: Various sizes and shapes?

The Witness: Various sizes and shapes and widths.

Trial Examiner Winkler: And grades? [557]

The Witness: And grades and bark.

Trial Examiner Winkler: There was bark on it?

The Witness: Yes.

Q. (By Mr. Tillman): How about dust conditions?

A. Well, the dust got in it sitting there, after sitting there for two years?

Trial Examiner Winkler: You mean this lumber that you were dry loading there that day had been sitting there for two years?

The Witness: Yes.

Q. (By Mr. Tillman): How many days did you work at that dry loading job?

A. We put in the three days.

Q. At the end of the third day had all the piles been loaded out? A. Yes.

Q. And about what time of the day did you finish the final loading?

A. Oh, I would say we got through about 4:30.

Q. When was the usual quitting time?

A. If I remember right, their regular quitting time was 4:00 o'clock.

Q. Well, when you finished the piles did you——

(Testimony of Max Gassner.)

A. We worked, we worked on a little different schedule then, if I remember right.

Q. Well, what—with regard to what your schedule was, did you [558] finish before the 8-hour day was up or after the 8-hour day was up, or what?

A. Well, just a little before. I would say a half hour, 40 minutes, something like that.

Q. What did you do in that half hour or 40 minutes?

A. We went down to where we had been piling unit piles and talked to the other two pilers which was the spare crew.

Q. Those three days that you were dry loading; Max, did you receive any criticism of any shape from Mr. Parker? A. No, I did not.

Q. From any other management representative?

A. No, sir.

Q. Did you receive any warning from Mr. Parker that you were loafing on the job?

A. No.

Q. From any other management representative?

A. No.

Trial Examiner Winkler: May I interrupt just one question. Did you receive any indication at all during this three-day period that you were going to be discharged?

The Witness: No.

Q. (By Mr. Tillman): In your years with the Company did you know of anyone else that Dant & Russell had discharged for loafing?

A. Not to my knowledge.

(Testimony of Max Gassner.)

Q. Had you done any dry loading for the Company before this [559] period of July 13th, 14th and 15th? A. I did in 1946.

Q. Any other time beside 1946 you did some dry loading?

A. That—let me get this straight now. This was gyppo in 1946. Yes, we did do dry loading in 1949.

Q. On the day basis? A. Yes.

Q. And gyppo or contract basis in 1946?

A. Yes.

Q. And had you had other experience at dry loading either on a contract or day basis?

A. Yes, minimum.

Q. Now, in that regard, had you done dry loading for any other company beside Dant & Russell?

A. Yes, I had.

Q. And what companies?

A. Shevlin-Hixon.

Q. Any other ones?

A. That's the only one.

Q. When had you done dry loading for them?

A. In—I would say in the '40's, or in between 1939 and 1940.

Q. Now, what, in your opinion, is a common day's work for day labor in dry loading?

A. Well, at Shevlin-Hixon, if we got out two carrier loads in the forenoon, as four hours, and about two in the afternoon, it [560] depended on how the weather conditions were, they considered it a good day's work.

Trial Examiner Winkler: How many board feet would that be?

(Testimony of Max Gassner.)

The Witness: I think those loads at that time would run straight 1 by 12 by 16, would run about 2800 feet to the load.

Trial Examiner Winkler: 28?

The Witness: 2800 feet to the load.

Q. (By Mr. Tillman): And when you say two carrier loads in the morning and two in the afternoon do you mean by per team or——?

A. Yes.

Q. Per team.

Trial Examiner Winkler: That's a little in excess of 11,000 feet per day?

The Witness: Yes. [561]

* * * * *

Q. (By Mr. Tillman): I'll change my question right now. When the contract pilers went on vacation, Max, how was their vacation pay figured out; on what basis? [563]

A. It was figured out three months prior to our vacation period. That is, from—to—we'll say—refer back to June, May and April. That was figured up, and taken the average of that, that is what we was paid our vacation on; which amounted to three dollars an hour.

Q. Per man? A. Per man.

Q. In your experience as a contract piler, have you seen men who could not handle the job?

A. Yes, I have.

Q. Is that very frequent or common?

A. Yes.

Q. How long would you say it took you to ac-

(Testimony of Max Gassner.)

quire the skill that a contract piler requires so you could make a rate of $3.00 per hour?

A. You mean from the time it took so I could hang my shingle out and say I was a qualified, experienced lumber piler?

Q. Yes. A. A year and six months.

Q. Now, Max, when you first went to work out at Dant & Russell, were they just doing the so-called square piling? A. That is all.

Q. And, how many methods of square piling were there? A. There was two.

Q. And, what did you call those two methods?

A. I'd say the two methods—one was the piles were crossed with the same material, or stickers, as we call them. Say like if you had a load of one-by-twelves, instead of using the one-by-four, or one-by-six, you used the one-by-twelve to make the air spaces in between the boards as you piled it up.

Q. Is that the same as what has been referred to here as cross piling? A. As what?

Q. As cross piling? A. Yes.

Q. How many stickers would there be in the course of that type? A. Three.

Q. What other system of square piling was there?

A. The other system is on your shop and select.

Q. What is the difference there?

A. Most places—and we used at Dant & Russell's—we used two-by-fours.

Q. Did Dant & Russell use only one system?

A. No, that was——

Q. They used both? A. They used both.

Q. What were the two-by-fours used for?

A. The two-by-fours would give a greater air space in between the lumber. [565]

Q. Used as stickers, you mean?

A. Yes. Greater air space for more circulation, so that the lumber would dry and make a better quality of lumber, because shop and select is cut from the outside log, which has all the sap in it.

Q. And, does that mean it is wetter wood?

A. It is heavier and wetter.

Q. Talking about lumber grades—shop and select—how near the top are they in lumber grading?

A. Select is the cream of the crop.

Q. And, what is shop? A. Shop is next.

Q. Next below select?

A. Because they get to cut all your door sills, window sills, all your sash and door. This lumber is remanufactured.

Q. By Dant & Russell you mean?

A. No, all they do is surface it; dry it and surface it.

Mr. Stirling: I wonder what the purpose of this line of questioning is? I can't see that it is relevant.

Examiner Winkler: Mr. Tillman, would you explain that please?

Mr. Tillman: Well, both the Trial Examiner, and also some of the questions of Mr. Stirling on other witnesses indicated that there wasn't a full enough explanation of some of the system out at the company. Now, I was going to have this witness explain rather thoroughly, square piling, because of his

(Testimony of Max Gassner.)

more experienced background in it than Mr. Christophersen. To the extent that the company has come forward with criticisms of work during the square piling here, I think it is material as to how it is done.

Examiner Winkler: Continue please.

Mr. Tillman: May I have that last question?

(Whereupon the reporter read the last question and answer.)

Q. (By Mr. Tillman): In the use of the two-by-fours in this shop and select, how many stickers were used in that type of piling?

A. Four.

Q. Now, in piling square piling, how many methods were used in the actual art of piling it? I mean, did you do it by hand, or machine, or what?

A. Done by hand and machine.

Q. All right. Would you describe how the machine operated?

A. Machine? All it done, the man put it in the hooks at the bottom, fed it the boards.

Q. What are these hooks?

A. They are the—to explain it right, they'd be little buckets, just the same as conveyor buckets, an endless chain.

Q. An endless chain? A. Yes. [567]

Q. And, the hooks are always going up and back down?

A. Yes, back down. The lumber is drawn up, and when they go back down the guy on the pile

(Testimony of Max Gassner.)

takes the lumber out and places it where it is on the pile.

Examiner Winkler: That is what is known as bar piling?

A. That is not bar piling.

Examiner Winkler: That is not bar piling?

Mr. Dant: Can I interrupt a minute? That is machine piling.

Examiner Winkler: I thought bar piling was the same as machine piling?

Mr. Dant: No. If you will read that over I think you will find it is different.

Q. (By Mr. Tillman): In that type of piling, Max, did the teams alternate as to which man was feeding the machine, and which——

A. Yes, he did; every other load.

Q. Now, the other method that has been referred to, so-called bar piling, how did that differ from machine piling?

A. Bar piling is a little slower, and a little harder on the back.

Q. Where does the bar come in? What is the bar?

A. Well, it is made out of spring steel.

Q. What are its dimensions?

A. When you first start your pile, as a rule your loads are [568] up here. You see, you stick the bar down on an angle, like this, and you get up on the top of the load, jack that board around, swing it around so the guy on the pile can get that board, (indicating throughout). He is the guy that places

(Testimony of Max Gassner.)

the board. When you get up high enough that you can stick this bar into the pile, then you jack over this bar sticking in the pile, and there is still one man on the pile, and one man on the load.

Q. Is the bar then used for the purpose of balancing the board that the man below is handing up?

A. That is right, yes.

Q. Now, on the subject of unit piling, did you hear Mike describe unit piling this morning?

A. Yes, I did.

Q. And, did you agree with his description of how a team piles units? A. That is right.

Q. Did your team follow a system similar to that he described in which one man breaks the pile?

A. Yes.

Q. Or, breaks the load I mean?

A. In other words, if you didn't, if one man didn't take the lead; if you was both grabbing for it, the *buy* that got hold of it first and brought that board out, he'd pinch the other guy's finger on the other end. [569]

Q. Now, in that type of piling, in unit piling, is it possible for one end of the pile to be sort of out of kilter, or anything, while the other end is in kilter? A. No.

Q. On your particular team, who was the lead man? A. I was.

Q. Is there any factor to determine which man does the breaking? A. Yes, it is.

Q. What determines——

A. The man that is the fastest breaks the lumber.

(Testimony of Max Gassner.)

Q. After a unit has been piled, and no one has watched you piling it, could you tell, or do you think any one could tell which man has stood at which end of the unit?

A. I should say not, unless the load was moved.

Q. I don't believe I follow your answer. What did you mean by, "unless the load was moved"?

A. The carrier picks it up and takes it away and moves it some place else. You couldn't tell who piled that. Get what I mean?

Q. No, I don't. First let's assume that you and Erickson finished piling a unit. A. Yes.

Q. And then you walk away and someone else comes along. Not having watched you piling it, could they tell which end you were [570] at and which end Erickson was at?

A. The only way they could tell which end I was at would be that we all work, we break in that one guy stays on the same end at all times.

Q. So, by knowing which end was the breaking end they could tell?

A. The stickers are placed by the same guy, see.

Q. How many stickers are placed by whom?

A. The guy that breaks, he only places two stickers, and the guy that places three stickers is on the other end. But, when they are moved you can't tell, one is just as straight as the other.

Q. Max, do you recall that strike in 1949 out at Dant & Russell's? A. Yes.

Q. Did you take any part in any action leading up to that strike? A. I sure did.

Q. What part did you take?

A. I took the part of putting a motion on the floor that we take a strike vote.

Q. Motion on the floor where?

A. At the union meeting.

Q. Who was presiding at that meeting?

A. Mr. Floyd Parker, I believe, was chairman at the present time. [571]

Examiner Winkler: May I ask, is Mr. Parker still a member; is Mr. Parker still a member of the union.

A. No, he isn't.

Q. (By Mr. Tillman): When you say, "Mr. Parker was chairman at the present time," you mean at that time? A. At that time.

Examiner Winkler: Speaking at the time of the strike motion.

Q. (By Mr. Tillman): Was your motion carried?

A. Yes, it was. At least, I think it was. It went out on strike, anyway.

Q. At any time following the end of that strike, did any representative of management criticize you or your partner for having left blued lumber around, or caused blued lumber?

A. Not that I recall.

Q. Did Parker ever criticize you? A. No.

Q. Mr. Clark? A. No.

Q. Were you notified in any way that you were held to blame for stained lumber?

A. Oh, yes, all the pilers were. I'd consider them all, because we all worked in the same——

(Testimony of Max Gassner.)

Q. Well, I say, were you notified that you were held to blame?

A. Yes, they put the blame on us, but that was through the faulty management. [572]

Q. They put the blame on all of the pilers?

A. All of the pilers.

Q. Do you remember when there was an instance of blame being put on all the pilers?

A. One incident was when they had a lot of shop and select, and they didn't know where they wanted to pile it. They left it setting in loads, and it blued, started to blue. Some of it blued.

Q. Under which manager was that?

A. That was under Cook and Redman.

Q. Since that strike, have you and Erickson, or you or Erickson been singled out for criticism for sloppy piling? A. No, we hayen't.

Q. Because of bad placement of stickers?

A. The only bad placement of stickers—and Erickson was just as guilty as I was—when the load wasn't level we'd shim up on one side with sticker to bring the load level.

Q. What do you mean the load wasn't level? Why wasn't it level?

A. Because the ground wasn't level; the blocks didn't set level.

Q. If the ground wasn't level, why would you shim up the load?

A. Because the loads would tip over. The load would tip, maybe out the other way or this way, (indicating).

(Testimony of Max Gassner.)

Q. That is the reason that it had to be straight and shimmed [573] up? A. Yes.

Q. Were the stickers all of uniform size?

A. No, they weren't.

Mr. Stirling: Excuse me. In those days.

Q. (By Mr. Tillman): Those days of unit piling when Max was working. Is that what you understood when you were unit piling? A. Yes.

Q. Were the stickers uniform?

A. Yes, they were not. [574]

* * * * *

Q. Now, on this unit piling it has been testified that the truckloads were dumped off in two rows, is that correct? A. Yes.

Q. And, in that type of dumping of the loads if there were two regular teams piling, where did those two teams start in their day's work?

A. We generally start at one end and go right straight through to the other end and then come back.

Q. Then come back on the second row?

A. Yes.

Q. Both teams were working on the one row at the same time?

A. Sometimes be both teams working on one row, and sometimes be working—each team would work on each row.

Q. Then these truckloads when they were dumped, how wide would the load be that they dumped?

A. The twelve inch come six wide.

(Testimony of Max Gassner.)

Q. Was there any practice of skipping a truck-load and jumping over to the next one in the row and leaving one? A. No.

Q. Do you recall any occasion when Mr. Parker came out and told the pilers to pile four inches and six inches and the pilers refused to do it?

A. No.

Q. What instructions did Parker normally give you? What [577] instructions did he give you pilers, as a group, what sort of instructions?

A. The only instructions Mr. Parker give us was to pile two different ways, one way was for the kiln, and the other way was for the yard.

Q. In other words, he would tell you when to pile for the kiln?

A. When we was to pile for the kiln, and when we was to pile for the yard. [578]

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Examiner Winkler: Mr. Stirling, are you ready to proceed?

Mr. Stirling: Ready.

Cross Examination

* * * * *

Q. (By Mr. Stirling): Now, you state that the contract, in 1945, was entered into with Dant & Russell in June? Are you positive it was June, or could it have been——

A. It could have been later.

Q. Could it have been earlier?

A. I don't think so. [581]

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(Testimony of Max Gassner.)

Mr. Stirling: I think that if he was interested in the contract he would have been interested in the date that it was entered into.

And, for purposes of the record we could, if they wish—we will stipulate that it was entered into in June of '45.

Mr. Tillman: It is agreeable. [582]

* * * * *

Q. (By Mr. Stirling): When cook made the statement that you say he made, "Don't let this happen again", do I understand that you are referring to your leaving early the day before?

A. Yes.

Q. Now, the grievance with respect to the eight-four lumber, do I understand that that grievance was dropped?

A. Well, it just played out, as I get it. I wasn't on the [583] committee. But, as I get it we was supposed to have conciliation service in on that and Mike or Mienke, whatever Mr. Dant's attorney was at the time; and he claimed that he was sick and couldn't report for this meeting. And, eventually it just played out, as near as I can remember.

Q. Well, did you take it up through regular grievance committee channels?

A. Yes, we did.

Q. And then, subsequently, just dropped the grievance?

A. Yes, as near as I can remember.

(Testimony of Max Gassner.)

Q. Now, on this matter of Erickson's injury, and when five men were working and you went to Mr. Clark and asked him if you could have Pavinski come in to work? A. Yes.

Q. Didn't he tell you, at that time, that they would be laying off men and that somebody from within the plant should be taken into that if anybody was?

A. He didn't mention it over the phone. He did the next day.

Q. Now, did you take that matter up as a grievance? A. No, we didn't.

Q. And, in your testimony as to the three square piles that you worked on on July 13, 14, and 15——

A. Yes.

Q. ——or, actually about two and two-thirds piles, I understand you said, did you have to do that work? [584] A. Didn't have to, no.

Q. You asked for the work, did you not?

A. I didn't.

Q. What do you mean you didn't?

A. I personally didn't ask for it. Hank asked for it. He didn't have a partner. He was the one that asked me.

Q. And, he told you what you were going to do when you got to the plant?

A. He said that we was going to load some lumber and pile——

(Testimony of Max Gassner.)

A. And, didn't you know, at that time, that it was dry loading from these square piles that had been in the yard quite a while? A. Yes.

Q. And, you knew the condition of those piles, and the fact that they had been there for a while?

A. Yes.

Q. And, what they were, etc.? A. Yes.

Q. Before you did the work?

A. Yes. In fact, I piled it. Why shouldn't I know the reason what conditions they were.

Q. You had piled them?

A. Yes. I piled some of them. I didn't pile all of it.

Q. Before you went to work on them you knew they were dirty, as you state, and that they were random widths and random [585] lengths, etc?

A. Yes.

* * * * *

Q. (By Mr. Stirling): Now, I understood you to say there was [586] some criticism of youn placing of stickers, in the unit piling, by management?

A. Yes.

Q. Is that right?

A. By shimming up the unit loads to keep them load level.

Q. Did Mr. Parker complain to you about the way you placed stickers in the unit piles?

A. He did tell me and my partner, which my partner done the same thing, that he didn't want no more stickers on the outer edges to keep the load level.

(Testimony of Max Gassner.)

Q. Did Mr. Clark complain to you about not placing the stickers right in the unit piles?

A. No, not that I know of. [587]

* * * * *

Q. Did not someone from management complain to you about leaving early before a kiln charge was fully prepared? A. No.

Q. Now, I am referring to some of the meetings which you had at which Mr. Dant was present. Do you not recall during any of those meetings Mr. Dant complaining to you about leaving early and not completing the charge for the kiln?

A. Not to my knowledge.

Q. And, you don't recall anybody in management—— A. Not to my knowledge.

Q. Do you recall any specific occasion on a Friday afternoon when you left early and the kiln charge was not finished, and you were asked——

A. No.

Q. ——why you hadn't finished the kiln charge, and you said that you had a sore arm?

Mr. Babcock: I object to that unless the date of it is fixed, Mr. Examiner.

A. No.

Examiner Winkler: Well, the answer is that he doesn't know.

Mr. Babcock: Counsel has some specific instance in mind. I think in fairness to the witness the dates can be fixed, the approximate dates at least. [588]

Q. (By Mr. Stirling): Sometime in the summer

(Testimony of Max Gassner.)

of '48, don't you recall an instance of you leaving early on a Friday afternoon without having completed the charge for the kiln?

Mr. Babcock: I object to that as immaterial. It is too remote from the time of the issues in this case.

A. No, sir.

Examiner Winkler: Did the witness answer that?

The Reporter: Yes, he did. [589]

* * * * *

Examiner Winkler: Will you read back the questions again, Mr. Reporter.

(Whereupon the reported re-read the last two questions.)

Examiner Winkler: Do you have the question?

A. I say no.

Examiner Winkler: Mr. Stirling, I am going to strike the statements of Mr. Dant from the record. Is there any objection to that proceeding?

Mr. Stirling: Well, that is your privilege.

Examiner Winkler: We will leave it in.

I also want to caution all counsel here that we are going to have no further upsets. If we do, we are going to have exclusions from the hearing room.

Continue, sir.

Q. (By Mr. Stirling): Do you recall a meeting in the summer of 1948 at which your committee was present and members of management, including Mr. Dant, when Mr. Dant told you and Christophersen that unless you stopped letting the lumber stain that he'd have to let you go? A. He did not.

(Testimony of Max Gassner.)

Q. Did you receive complaints during the early part of 1949, from Mr. Parker, with respect to your piling? A. No. [592]

Q. None at all?

A. With the exception of shimming those loads up.

Q. Now, coming down to the July 13th, 14th and 15th, incident; did you come on the job with Mr. Christophersen? A. That is right.

Q. On the 13th? A. That is right.

Q. And, did you go right to work?

A. We punched in and went over there and started to work.

Q. Did you start to work as soon as you got over there?

A. Well, we wouldn't run over there and jump at it like we was a bunch of maniacs, for sure. You wouldn't want a man to do that, would you—or fly over there, would you, from the time we left the clock out until we got over there?

Examiner Winkler: Please answer the questions.

Q. I asked you if you started to work when you got over there?

A. Yes, as quick as we got there.

Q. And, during the course of that day, the 13th,— A. Yes.

Q. ——did you work steadily, or did you take time off from time to time?

A. The only time we took off was when the carrier come in and moved loads out.

Q. That was the only time you took out?

(Testimony of Max Gassner.)

A. Yes; and when we went in unit pile. [593]

Q. Other than that you worked steadily the entire day? A. Yes, we kept a moving.

Q. Did you sit in your car any part of that day during working hours?

A. Did during noon hour.

Q. During the noon hour you did? A. Yes.

Q. That was your lunch hour you mean?

A. We ate our lunch in the car.

Q. Did you have your water in the car that day?

A. Yes.

Q. Then on the 14th did you come to the job with Christophersen? A. Yes.

Q. Punch in and go out to the yard?

A. Yes.

Q. And, did you start to work? A. Yes.

Q. Right away? A. Yes.

Q. Weren't you held up one of those days by one of you not having an apron? A. The 13th.

Q. Well, then, you didn't start to work right away on the 13th? A. Yes we did. [594]

Q. Well, did you start to work by yourself then?

A. No.

Q. Well, Mr. Christophersen testified that he gave you his apron and started to look around for another apron. A. Yes, that is right.

Q. So, you didn't start to work right away on the 13th?

A. We started to work on the 13th when we couldn't get an apron, we started to work.

(Testimony of Max Gassner.)

Q. Didn't Mr. Christophersen spend some time looking for an apron? A. Yes.

Q. Do you know how much time he spent looking for an apron?

A. He could have spent fifteen minutes maybe.

Q. A half hour? A. Not a half hour.

Q. Then, during that time you weren't working?

A. No.

Q. And, on the 14th ~~did you~~ work steadily, or did you take it easy?

A. We done the same thing.

Q. The same thing? What did you mean by the same thing?

A. I mean the same thing; we went back and worked until they told us to go pile unit loads, and we went back.

Q. How much time did you spend on the unit piling?

A. Well, I couldn't give you a definite amount of time on it. [595]

Q. Would you be able to say about what time of the morning you went over to do the unit piling? Was it in the morning?

A. I'd say it was in the morning. It could have been——

Q. About what time?

A. Oh, I'd say it could have been nine, ten or eleven o'clock.

Q. And, about how long a time did you spend on the unit piling?

A. Well, I couldn't answer that.

(Testimony of Max Gassner.)

Q. Well, did you come back to work on the dry loading before lunch that day, the 14th?

A. I don't remember that.

Q. You don't remember? A. No.

Q. Do you remember whether or not you sat in your car during working hours on the 14th?

A. No.

Q. You did not?

A. Not to my knowledge. Only to get a drink of water we'd go in the car, and when we had our smoking periods we sat in the car.

Q. When was your smoking period?

A. Oh, I'd say, if I remember right, it was around two o'clock or three o'clock.

Q. How about in the morning though?

A. In the morning I think it was around nine or ten; about [596] ten.

Q. About ten?

A. Yes, generally between about every two hours.

Q. Didn't you go and sit in the car on the morning of the 14th?

A. Not to my knowledge, only the smoke period.

Q. Did you return from the unit piling prior to your lunch hour on the morning of the 14th?

A. I don't remember.

Mr. Babcock: That has been asked and answered.

Q. (By Mr. Stirling): You don't remember. But, you do remember that you took a smoke period on about ten o'clock in the morning?

A. I don't remember that either.

Q. I thought you just testified that you remembered that?

(Testimony of Max Gassner.)

A. I remember we taking a smoke, yes, but I don't know whether it was ten. It was custom that they take the smoke period every two hours, which was ten minutes.

Q. Now, with respect to sitting in the car, do you say that you don't remember that, or you did not do it?

Examiner Winkler: Sitting in the car when?

Mr. Stirling: During working hours.

Examiner Winkler: Are you talking during the smoking periods, or apart from the smoking periods?

A. No. [597]

Q. (By Mr. Stirling): Do you remember sitting in the car? A. No.

Examiner Winkler: We are going to have to leave this hearing room in five minutes because they need it.

Mr. Stirling: We will make it.

Q. On the 15th you continued to work the same as you had the other days, did you?

A. That is right.

Q. Working steadily all the time?

A. That is right, on unit piling.

Q. Did you do some unit piling on the 15th?

A. Yes.

Q. How much time did you spend on the unit piling?

A. I couldn't tell you that, because I don't know.

Q. Would you be able to estimate?

A. I wouldn't give an estimate.

(Testimony of Max Gassner.)

Q. You wouldn't even be able to say whether it was approximately an hour or a half hour?

A. I couldn't tell you because I didn't have a watch or the other boys didn't have a watch.

Q. Would you say you spent a full morning on the unit piling? A. No.

Q. You did not? A. Not to my knowledge.

Q. I can't hear you. [598]

A. Not to my knowledge I wouldn't say we spent a full morning.

Q. Then you spent a part of a morning on it, is that right?

A. I think, yes. It could have been two hours, three hours or one hour. I couldn't answer that and be specific on it.

Q. Do you know when you began your unit piling; what period in the morning?

A. No, I wouldn't.

Q. Do you know whether you went over to the unit piling right after you got there, or after you had been there a while?

A. I couldn't answer that either.

Q. You couldn't answer that? A. No.

Q. In other words, you could have gone and started that unit piling the first thing in the morning?

A. Could have; or could have went over and loaded. I couldn't answer that, I don't remember.

Q. Did you remember these times when you took this discharge up with the grievance committee?

A. No, I don't.

Q. Perhaps you don't get my question.

(Testimony of Max Gassner.)

A. Exactly the date?

Q. Perhaps you don't understand by question. When you took your discharges up with the grievance committee——

Examiner Wilkins: Are you suggesting when the witness [599] took these up the next day, or within a few days of the discharge, whether he remembered these times?

Mr. Stirling: Yes.

Q. Didn't you remember you had your first grievance meeting on July 18, as I understand it; wasn't that right?

Mr. Babcock: The witness wasn't at that meeting.

Mr. Tillman: The record shows clearly that this witness was not there.

Q. (By Mr. Stirling): Weren't you at the first grievance meeting, on July 18th, involving your discharge?

A. No, I wasn't. You mean with the management?

Q. Yes. A. No, I was not present.

Q. Weren't you present at one of the grievance meetings involving your discharge?

A. With the management?

Q. Yes. A. No.

* * * * *

Q. During those three days didn't Mr. Parker come over to you several times while you were doing that dry loading? [600]

A. I believe Mr. Parker come over once.

(Testimony of Max Gassner.)

Q. What day was that?

A. That was the first day.

Q. Did your have any conversation with him?

A. We asked him—Hank asked him if he had an apron. He said he'd go and see if he could get one. And, about an hour or so I'd say—I wouldn't say exactly an hour, but it was from a half an hour to an hour—he came back and said there was no aprons available.

Q. Didn't he ask you, at that time, what the matter was, or whether you needed any blocks?

A. Not to my knowledge.

Q. And, you say that is the only time he came over to you, at the dry loading, during those three days?

A. That is as far as I can remember. [601]

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Redirect Examination

Q. (By Mr. Tillman): On your cross examination yesterday you testified that on some occasion Parker had criticized you for shimming up units. When you were criticized on that occasion, who was present besides you and Mr. Parker, if anybody?

A. My partner.

Q. And, to whom was the criticism directed?

A. Both of us.

Q. How many occasions did Parker criticize you about that particular point?

A. Just once.

Q. And, with respect to shimming, what did you do thereafter?

(Testimony of Max Gassner.)

A. We didn't shimmy them anymore. [604]

* * * * *

Q. Prior to July 14, 15 and 13th had you piled or worked with Hank Christophersen as a partner?

A. Oh, I'd say probably three days.

Q. Over what period of time, I mean?

A. That was over, I'd say, a week; could have been weeks.

Q. Well, I mean, did the three days cover all the time that Hank was there, or some other period?

A. All the time he was there.

Q. In other words, you only worked with him probably three days in all the time he was there up until July 13th? A. Yes. [605]

* * * * *

Mr. Tillman: At this time, Mr. Examiner, the General Counsel will rest.

Examiner Winkler: Mr. Babcock.

Mr. Babcock: The union has no further testimony.

Examiner Winkler: Mr. Stirling, are you ready to proceed with your case?

Mr. Stirling: Yes. I would like to ask Mr. Dant to take the stand, please.

ROBERT DANT

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

(Testimony of Robert Dant.)

Direct Examination

Q. What is your name Mr. Dant?

A. Robert Dant.

Q. And, your address?

A. 6313 Riverside, Vancouver, Washington.

Q. And, what is your position with respect to Dant & Russell, Ltd.?

A. I am managing partner of the company.

Q. Did you take an active part in the management of the Redmond mill during any of the time that Gassner and Christophersen [606] worked there?

A. Yes, I took an active part in the management of the mill mainly during the latter part of 1947 and '48 up until the time of the strike.

Q. And, what was the general situation at the mill during the latter part of 1947 and '48 with respect to any changes in the layout of the mill, or—well, were there any changes going on with respect to the mill at that time?

A. During late 1947, and during practically all of 1948 we were in the process of a large amount of construction work there. We only had a very small plant prior to that time. During that period we built a new planing mill; we added an additional dry kiln; we put up a new boiler house; a new burner; we installed a new boiler; we built an entirely new power plant, and there was a large amount of construction work going on during that entire year.

Q. And, did that interfere with the operation of the plant?

(Testimony of Robert Dant.)

A. Yes, it did, to a certain extent. There was a lot of men working there. We were doubling the capacity of the plant in anticipation of a larger amount of lumber to be handled. It is impossible to keep an even flow of service and everything else to all parts of the operation. The company could have shut the plant down during this construction work, but we felt it was better to try to operate. And, we had lumber coming in, and we did do our best, under the conditions, to attempt [607] to operate the plant during that time.

It was a difficult period, however, for everybody concerned.

Q. Now, did you have the cooperation of all of your employees during this expansion period?

A. Well, the cooperation of everyone, I would say, with the exception of the pilers in general. Any time that they weren't served hand and foot they would either go home or run into the office and complain about any slightest thing that was wrong.

Q. And, does that pertain to Max Gassner and Hank Christopherson? A. Yes, it does.

Q. How long has this plant been in operation Mr. Dant? A. Off and on for 17 years.

Q. And, when you say, "off", when was it not in operation?

A. We had a fire at the plant in 1942 which put the plant out of order for a while. Then the plant was leased to others during a period.

(Testimony of Robert Dant.)

Q. And, when did you resume operations, that is, begin this operation that is in existence now?

A. In December 1944 we began to reconstruct the plant after the last fire.

Q. Now, during what periods has the plant been under union contract?

A. Well, when the plant operated before the 1942 fire I believe we were under union contract from about 1938 on. [608]

Q. Until the fire? A. Until the fire.

Q. And, was that the CIO? A. Yes.

Q. IWA? A. Yes.

Examiner Winkler: What was the date of that Mr. Dant?

A. The fire?

Examiner Winkler: No, the period during which you had this union contract.

A. We signed up with the union, I believe, from about 1938 until the time of the fire, and for sometime after that until we leased the plant to Tight Knot Pine Mill.

Examiner Winkler: That is from approximately 1938 to the start of '43?

A. The start of '43, I would say, would be about right. Then when the plant resumed operations at the end of '44. When we started to build the plant we were immediately organized and signed the contract with the CIO in the summer of '45. I thought it was May, but I guess it was June.

Q. (By Mr. Stirling): And, was the organization of the plant by the union peaceful?

A. Yes.

(Testimony of Robert Dant.)

Examiner Winkler: Are you speaking about the period in the spring of '45? [609]

Mr. Stirling: At both times.

A. At both times it was peaceful, and neither time did we have a certification election.

Q. In other words, you recognized the union without a certification election?

A. We recognized the union on a cross-check basis.

Q. Now then, what was your experience with Gassner and Christopherson during your active participation in the management of the plant during the latter part of 1947 and 1948?

A. Well, I attended a number of meetings at which particularly Gassner was present. The meetings were practically all taken up with complaints by them about the pilers' troubles to such an extent that finally the rest of the committee complained that they didn't have any time to take up any other union business because they were always so busy, in these meetings, talking about the pilers' troubles. I made constant complaint to Gassner that lumber was being allowed to lay around and not being piled. That was true of the four and six inch widths, and also of the four-quarter thickness lumber.

I recall one time when I spoke to him about certain loads out there and said, "Those loads have been there three or four weeks." And, he laughed and said, "They have been there six."

Mr. Tillman: Are we going to fix the time and place of these? [610]

(Testimony of Robert Dant.)

A. These meetings were the spring and summer of '48. They seemed to take a great joke out of the whole thing, and they just complained about the management all the time. They complained about the fact that their service wasn't right up to what it should be, and about what went on was that if their service wasn't a hundred per cent all the time they'd just jump in their car and go home and leave the lumber lay there.

And, we made constant complaint about it at the meetings, and also to them in between meetings.

The final thing I recall is when Tim Sullivan told me in the meeting in their presence that if they didn't start doing their work the way they should, that we ought to fire them, and that he would uphold our doing so; felt that we would be completely justified.

Q. (By Mr. Stirling): Just what was the situation with respect to the fours and sixes, the four and six inch width lumber?

A. Well, our arrangement with them covered a flat price for the piling of all widths of lumber. And, of course, in piling the wider widths of lumber they could make more money than in piling the narrow widths. So, they piled the wider widths, and then when they got through piling those they'd just go home and leave the narrow widths. And, I offered, several times, to readjust the scale of paying less for the wider widths and [611] paying more for the narrow widths in order to make the thing average out right, and they refused to accept

(Testimony of Robert Dant.)

any such change as that. They just went on and did just exactly as they pleased. That is the size of it.

Q. Did they refuse to pile the fours and sixes?

A. Yes, they did. The only way that we could ever get the fours and sixes piled was to give them additional scale, such as scale and a half or something like that, and that was the way that the manager Anderson got along with them, was that every so often he'd go out and make a deal with them to give them additional scale or additional money to pile these widths that were not as attractive.

It reached such a point, that the amount of lumber coming in and being piled was so far off from the rest of our figures that it became very noticeable, and I objected to it very strenuously all the time. Anderson said that that was the only way he could get along with them.

Q. Now, did you have any experience with them with respect to the kiln charge?

Mr. Babcock: What do you mean, "with them"? I think the question is too vague. He has been talking about the pilers as a whole.

Q. (By Mr. Stirling): With Gassner and Christopherson?

A. With Max Gassner and Christopherson, yes. I recall one day when they were piling a charge for the kiln so the kiln [612] could be loaded, and and they just deliberately left the job early in the afternoon on Friday and started to go home. Christopherson had apparently already left, and Gassner

(Testimony of Robert Dant.)

was leaving when the foreman Simons caught up with them at the office.

Mr. Babcock: Just a minute now. I object to this unless it is shown that this witness was present.

A. I was present.

Mr. Babcock: All right.

A. Mr. Simons caught up with Gassner at the office where Gassner was going to check out for the day. Simons and Gassner were having a pretty heated argument about this matter and I went over to see what was the trouble. I was standing right there at the office. Simo told me that Gassner and Christopherson had left the kiln without the last load loaded on the last kiln truck so that the kiln couldn't be charged, and that they were deliberately going home and leaving the kiln in this condition. And, Simons was of a mind to fire them right there for doing what they were doing.

So, I asked Gassner what was the trouble, and then Gassner pleaded that he had a sore arm and he couldn't finish this last load.

So, finally the thing had already settled itself. Christopherson had gone and Gassner was the only one that was there that I talked to. So, I don't know about Christopherson's [613] part of it, but I do know about Gassner's part of it.

The next working day, Monday, Gassner was back at work, and seemed to be all right.

Q. And, had he been working prior to that, that day?

A. He had been working right up to that time, yes.

(Testimony of Robert Dant.)

Q. Well now, why is it necessary that the charge for the kiln be finished on Friday? Just what is the kiln operation?

A. Well, the kiln is charged. When you charge the kiln you put in a load of green lumber. That stays in the kiln for a period of from three to five days, during which time it is drying. During that same time you load up a new charge of green lumber to go into the kiln. When the charge that is in there is dry it might become thoroughly dry at most any time; during the week; during the day; during the night; over the weekend, or any other time. Whenever that lumber is thoroughly dry it is taken out and the lumber that is in the kiln is taken out and the new charge is immediately put in so that no time is lost in the kiln drying of lumber. The plant is particularly dependent on having as much dry lumber on hand as possible to keep it operating. Any time it is lost there is quite a serious matter to the plant.

If all of the kiln trucks, of which there are ten, are not fully loaded, the kiln won't operate properly. In this case they had about nine and a half loads loaded, and left the last half of the last load so that we would be unable [614] to charge the kiln until the following Monday morning, even though the kiln charge that was in there was due to come out sometime that Friday night.

What we would have to do in a case like that would be to go and get some other men and put them on the job and have them finish up loading the kiln

(Testimony of Robert Dant.)

charge, with whatever arrangement we could work out with them, probably running into overtime, by the time we got at it.

Q. And, on that particular day, did they have time to complete that?

A. It was only 2:30 in the afternoon when they were leaving.

Examiner Winkler: Did we fix the time when this occurred?

Mr. Tillman: No.

A. In about June of '48, as near as I can place it.

Examiner Winkler: What is your quitting time?

A. Our hours of operation, as near as I can remember, were from eight to five.

Examiner Winkler: In other words, you say they left at 2:30, and they should have remained at least until five?

A. The pilers only worked about six hours a day, and they may have started earlier than the rest of the crew.

Q. (By Mr. Stirling): Why wasn't some disciplinary action taken, or was there disciplinary action taken as a result of these occurrences?

Examiner Winkler: What occurrences are you referring to? [615]

Mr. Stirling: These ones he has mentioned thus far.

Examiner Winkler: The matter of the dry kiln and the matter of the——

Mr. Stirling: The matter of leaving the lumber pile up.

(Testimony of Robert Dant.)

Examiner Winkler: Were you referring to the pilers generally when you—or are you referring to Gassner and Christopherson? I will ask that of Mr. Dant.

Mr. Stirling: I think he answered that previously.

Q. (By Mr. Stirling): When you refer to the leaving of lumber piled around——

A. The conversations were a lot with Gassner. In the meetings the complaints were about all of them.

Examiner Winkler: In other words, Gassner was the representative of the pilers particularly?

A. Well, we had a peculiar situation there, Mr. Examiner, in that three of the pilers came from Bend. That was Max Gassner, Mike Gassner and Christopherson, and they all rode in the same car. So, if one of them decided to go home they all went home, and that was all there was to it.

Examiner Winkler: I think the record should show, that Redmond, where the company's plant is situated, is 16 miles from Bend.

A. Sixteen miles from Bend, yes.

Examiner Winkler: Would you please state Mr. Stirling's last question?

(Whereupon the reporter did as directed.)

A. In regard to the kiln matter, we accepted the explanation that Gassner's arm was sore, and that he couldn't continue. In regard to the matter of leaving lumber laying around and not piled, we constantly complained about it; threatened, and every-

(Testimony of Robert Dant.)

thing else, but, it wasn't too easy to get pilers in those days, and they were constantly complaining that they had lots of troubles on their side, and, as far as I remember, we just tried to get along as best we could, under the circumstances.

Q. (By Mr. Stirling): In view of the shortage of pilers, and the——

A. The shortage of pilers.

Q. And, the renovation of the plant that was going on? A. Yes.

Q. Now, you heard the statement of the witnesses that the company did not know where the lumber was to be piled, and that they complained to management because of that, and left their work because of that. Do you know of any of those occurrences?

A. Well, I consider that a bunch of trash, because in square piling the lumber was dumped in front of pile bottoms, or a pile bottom. In that case, there is no other place that the lumber can be piled, it has to be piled on that pile bottom, unless it is bodily picked up and removed to some other location, which could not be done, in any conceivable case. In [617] unit piling all you need to unit pile is your rack and three jitney blocks, so, wherever the load is piled you would unit-pile it. I know of no cases like that where the company didn't know where the lumber was going to be piled.

Q. Now, was it up to the pilers to determine where the lumber went after it was piled, or did they have anything to do with that?

(Testimony of Robert Dant.)

A. In the unit piling you mean?

Q. In either the square or the unit piling?

A. Well, in the square piling, after it was piled it just stayed there until it was dry.

Q. And, with respect to the unit piling?

A. In the unit pile it wouldn't make any difference if it did stay in the loads where it was for some time, and, it was no concern of the pilers, particularly, what was done with it after it was piled.

Q. It was hauled away by the——

A. It was hauled away by the carriers. [618]

* * * * *

Examiner Winkler: Mr. Dant, before you go on with your testimony, would you please tell us the basis of your judgment concerning the performance of Gassner and Christopherson, whether or not it was first-hand observation?

A. Yes, it was. I consider myself qualified. I lived there and built the plant, and operated it for seven years myself, during which time we handled as much as twenty million feet of lumber in the yard.

Examiner Winkler: The thing I had in mind is not your qualifications to pass on their work, but whether or not you actually saw their performance.

A. Yes, I did. I think I should interject, here, that I personally managed the plant three months myself during the year 1948, so I think I know what was going on. [619]

(Testimony of Robert Dant.)

* * * * *

Q. (By Mr. Stirling): Did you wish to elaborate on that piling question Mr. Dant?

A. Yes. In the square piling the pilers Max Gassmer and Christopherson were not as careful as they should have been with the sticker placing. They would place the stickers in alternate positions so that the lumber would warp and so forth. They did not make adequate provision for chimneys in the piles.

Q. What do you mean by chimneys?

A. A chimney is an open space that is left in the center of a square pile for the purpose of providing air circulation through the pile. It is particularly used in the case of random width piling, where all widths are piled in the same pile. [620]

* * * * *

Q. (By Mr. Stirling): Well, Mr. Dant, have you described what a chimney is?

A. A chimney is an open space left in the center of a square pile where no lumber is piled.

Q. And, does the space run all the way through from one side of the pile to the other?

A. From the front to the back of the pile. This open space is left for the purpose of providing a break in the center of the pile in order to facilitate air circulation. It has the effect of dividing the pile into, in effect, half piles, thereby providing a better air circulation and seasoning of the wood.

Q. And, what type of chimney were the men instructed to leave in the square piles at the Dant & Russell plant?

(Testimony of Robert Dant.)

A. They were instructed to leave a chimney about fourteen inches wide at the bottom, narrowing up to six inches wide at the top, but the chimneys that they built were much [621] narrower than that at the bottom.

Q. Just a minute Mr. Dant. In other words, the chimneys were to be in more or less of a V shape, wide at the bottom and narrow at the top.

Examiner Winkler: Inverted V.

A. Yes.

Examiner Winkler: What was the size of the top, sir?

A. Six inches.

Examiner Winkler: Six inches.

Q. (By Mr. Stirling): And, did Max Gassner and Christopherson follow instructions with respect to this type of chimney?

Mr. Babcock: Objection, unless the foundation is laid as to the qualification of the witness to answer.

A. I was right there.

Mr. Babcock: I think it should be developed as to whether he actually observed them piling, and how often he observed them piling; whether they were piling together or separately.

Q. (By Mr. Stirling): Did you observe Max Gassner and Christopherson doing square piling?

A. Yes.

Q. And, did you observe them several times?

A. Yes.

Q. And, during those times, or on those oc-

(Testimony of Robert Dant.)

casions, what did they do, did they follow the instructions with respect to the chimneys? [622]

A. No, they did not.

Examiner Winkler: May I interject at this point? So far as the record shows, Gassner and Christopherson were not partners except during a few day period.

A. I haven't said they were partners.

Examiner Winkler: I want to understand the record myself. Now, when Mr. Dant is testifying to the effect that Christopherson and Gassner were not making the proper chimneys in their square piles, is he testifying to the effect that the two teams, one of which Mr. Christopherson was a member and another team of which Mr. Gassner was a member, were not doing the work properly? And, is he also testifying in respect to these teams that the man at fault on each of these teams was, in the one case Mr. Christopherson, and in the other case Gassner?

Mr. Stirling: Yes. I think Mr. Dant will answer that.

Examiner Winkler: Well, I call that to your attention.

A. I am only testifying as to the actions of these two men because the questioning has been narrowed down to these two men. On a direct question I would say that they were not the only ones that were at fault. The fault was——

Examiner Winkler: Was universal among the pilers?

A. Was all the pilers, that is true, yes.

(Testimony of Robert Dant.)

Q. (By Mr. Stirling): When you are referring to all the pilers, you mean Hank Christopherson and his partner and Max Gassner and his partner, then, do you Mr. Dant? [623] A. Yes.

Q. That is with respect to this——

Examiner Winkler: Chimney.

Q. ——chimney construction?

A. Yes, the matter of the chimneys was brought up a number of times in the grievance meetings, and——

Q. What did you observe as to the chimneys that they left in the square piles?

A. The chimneys were not wide enough at the bottom, and they quite often were zigzagged up the pile. In other words, the chimney would be maybe four or six inches wide at the bottom and not carried up in a straight line from there. The result of not having proper chimneys is that the lumber will stain.

Examiner Winkler: Not properly seasoned?

A. The lumber will stain through not having the proper amount of air circulation.

Examiner Winkler: Did we fix the time of this as being in 1948?

A. I would say——

Examiner Winkler: It would have to be before August of '48 before they changed.

A. Yes, I would say roughly around June of '48. However, the subject went on for several months all during the year of 1948. [624]

* * * * *

(Testimony of Robert Dant.)

Q. (By Mr. Stirling): Then, about when did the strike occur that has been referred to Mr. Dant?

A. The strike occurred in about the end of October, either the last day of October, or the first day of November, right in that period, and it went to, I believe, December 8th, or 9th.

Q. And, what was the reason for the strike as told to you by the union?

A. Well, I would say that during the entire year 1948 we were constantly threatened with a strike. There was just one crisis after another. Every time that the company wouldn't give in to any demand that the union made, why, Sullivan would say, "Well, we'll have to take a strike vote." [625]

* * * * *

Q. All right.

A. The final actual reason as given for the strike was the fact that the union wanted us to pay two weeks vacation pay to employees who had worked for the company for a period of five years. I objected to doing that on the basis that according to our original contract with the union signed in 1945, it quite specifically provided that the five-year period should date from the signing of that union contract. And, I felt that until the five years from that date was up, no two weeks vacation pay should be justified.

In a subsequent contract that was signed there was a little change in the wording which I either didn't pay any attention to, or was assured was all right. At least, I certainly didn't suspect anything.

(Testimony of Robert Dant.)

But, apparently in this change in the wording the thing was changed so that the five year period was at least set up on a basis where a certain amount of doubt was cast on just what the effective date of the five year period would be.

That is not a very coherent statement, but I will try to clarify it. In the second contract that was signed, the thing was changed to such an extent——

Q. You mean the vacation pay clause?

A. The vacation pay clause was changed to such an extent that [626] it gave some reasonable doubt as to the effective date of the five year period.

Q. And, the strike then occurred over that dispute on the vacation pay?

A. That was the immediate cause of the strike, yes.

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Cross Examination

Q. (By Mr. Tillman): Mr. Dant, about your active management of the plant prior to the period which you named, in the latter [627] part of 1947, and during '48, what part did you play in the management of the plant? Let's take them by years. In '45 what part did you take in the management of the plant? A. Very little. [628]

* * * * *

Q. Now, you say you took over an active part as manager in the latter part of '47. How late is the latter part, is that December?

A. No, I didn't say I took over an active part

(Testimony of Robert Dant.)

in the management [629] until the summer of '48, after Mr. Anderson had left. Oh, I see. During the latter part of '47, I believe in about November or December we started to make all these improvements up there, all this new construction, and, at that time I began to visit the plant much more often; largely in connection with the construction work. And, I continued that during the early part of '48, and also during the early part of '48 and late '47 I attended quite a few of these grievance meetings.

Q. Well now, let's take '48, then, before you did what you described as personally managed the place. How often would you make a visit out there, then, to the plant during that period?

A. The first half of '48?

Q. Yes. Well, what was the date you took over personal management?

A. Oh, I would say along in July, probably June or July of '48.

Q. All right. Well then, up until that period, how often did you visit the plant?

Examiner Winkler: Are you speaking of the period in '48?

Q. In '48.

A. I visited the plant pretty regularly every, I would say, two to three weeks.

Q. And then, how long would you stay when you got there?

A. Usually two or three days. [630]

Q. Now, when you say you were out there personally managing the plant for three months, does

(Testimony of Robert Dant.)

that mean you stayed there and lived there for three months? A. Yes.

Q. And, I mean, generally speaking, then, you were out at the plant steadily during the three months?

A. Well, out there every day? No. I made trips into my office in Vancouver on occasions, and attempted to spend the bulk of my time here. [631]

* * * * *

Q. Now, in respect to the two discharges here, Gassner and Christopherson, do you know of any instances that you would regard as insubordination on their part during their employment?

A. Yes.

Q. Would you fix the time and which was involved?

A. My dealings were largely with Gassner. Christopherson was in some of the meetings that we held, but Gassner was in practically all of them. During all of these meetings we constantly complained about the way the lumber was being piled, the lumber that was not being piled, and their complaint was always about the management, and the fact that the service was not all that it should be.

When you come to insubordination, I don't know, that is a pretty big word, and it has a lot of meanings.

Q. Well, it is a word used by you, is it not?

A. No, not used by me.

Mr. Stirling: I think——

Examiner Winkler: I think that in fairness to

(Testimony of Robert Dant.)

the witness that we should advise him that the general counsel is referring to the company's answer filed in this case, and the use of the [636] word, "insubordination".

Mr. Stirling: Mr. Dant has mentioned one instance in his direct examination.

Mr. Tillman: I submit that there is no use coaching the witness on this.

Examiner Winkler: Do you have an objection to make Mr. Stirling?

Mr. Stirling: Well, I was merely going to say—

Examiner Winkler: May I caution both counsel now, that we don't want counsel to tip off any witnesses. I am not saying that that is your purpose now, but, since it was raised by General Counsel, I want to caution both counsel not to make any statements that might tip off the witness as to what to testify to. We can take objections and take positions of parties.

The Witness: May I say something?

Examiner Winkler: Yes, certainly, unless your counsel wants to—continue Mr. Dant.

The Witness: The complaint and the answer are concerning matters that occurred a year later, isn't that correct?

Examiner Winkler: I don't know, sir. Your counsel filed the answer. I presume the company filed the answer.

The Witness: I will attempt to answer the question.

Mr. Stirling: I might add that, of course, more

(Testimony of Robert Dant.)

than Mr. Dant dealt with these men from time to time, and all of [637] our allegations——

Examiner Winkler: As I recall, now, the General Counsel is asking Mr. Dant what his information is about insubordination of the two men involved. If anyone wants to bring what other information they might have, I presume that is perfectly relevant to this proceeding.

Mr. Stirling: Do I understand his question to be whether Mr. Dant——

Examiner Winkler: May we have the reporter state the question? Mr. Reporter, will you repeat the question?

(Whereupon the reporter did as directed.)

Examiner Winkler: Read back all the last part.

(Whereupon the reporter read back the last question and answer.)

Examiner Winkler: Did you have anything further to add to that point Mr. Dant?

Mr. Tillman: Well, I will frame another question.

Examiner Winkler: Before you frame another question; Mr. Dant, do you have anything to add to the last statement regarding incidents of insubordination of Gassner and Christopherson?

A. I believe that when men are ordered to do certain work, and they just don't do it, such as various times when they were ordered to go and pile four and six inch, and to pile the four-quarter thickness lumber, I believe that that would con-

(Testimony of Robert Dant.)

stitute [638] insubordination, and that took place several times during the summer of 1948.

Q. (By Mr. Tillman): Now, let me have the occasions when you specifically went out and gave an order to either Gassner or Christopherson to pile four inch or six inch, or four-quarter?

A. I can't give you specific instances because the time is too far back, but I know that the matters were discussed in meetings, time and time again, and I remember one specific instance when I mentioned to Gassner that there were certain loads out there that had been there for four weeks, and he laughed and said they'd been there for six weeks.

Q. Yes, you have already testified to that.

A. I believe that constitutes insubordination also on the part of an employee.

Q. Did you go out to where the pilers were piling and give them any order that they disobeyed in respect to these four inch or six inch or four-quarter, or any other kind of lumber?

A. My foreman did.

Q. Did you?

A. I did in the meetings. I told them that if those piles weren't piled we'd have to get new pilers who would pile them, and dispense with their services.

Q. When did you make that threat of termination of employment?

A. During the spring and summer of 1948 at meeting after meeting. [639]

* * * * *

(Testimony of Robert Dant.)

Examiner Winkler: Will you read the original question?

(Whereupon the reporter read the following question to the witness: "Q. Now, let's go to another point in your answer. You mentioned as a defense that the employees failed to perform a full day's work. What instances do you have in mind covered by that particular defense?")

Examiner Winkler: I think Mr. Dant now has the question.

A. It must be remembered that my entire testimony applies up to the time of the strike only.

Q. Well, I realized that your own personal experience applies up to the strike.

A. With that stipulation I will answer the question.

Q. All right, go ahead.

A. I already testified to the day, to the matter of the dry kiln not being fully loaded. There were other days during the summer of 1948 when Gassner and Christopherson would leave early with lumber left there to be piled, not only in the four and six inch widths and the four-quarter thickness, but oftentimes other loads would be left there. And, I would say, freely, that they worked when they felt like it, and when they didn't feel like it they went home. [641]

It is true that during that period that the service was not a hundred per cent. We couldn't keep it a hundred per cent because of the construction work that was going on. But, I don't feel that they are

(Testimony of Robert Dant.)

nearly justified in doing the things that they did, particularly leaving so much lumber to be piled and going home at an early hour.

Q. Could you think of any other incident that you meant to cover by that particular allegation?

A. I believe there are other incidents with which I am not personally familiar that occurred after the time of the strike.

Q. And you were advised by management on the spot? A. That is correct.

Q. Can you think of those?

A. Can I think of them?

Q. Yes. In other words, what Mr. Clark or someone else may have told you.

A. I don't think that I would be qualified to testify about that.

Q. Well, I am just asking for your recollection as to what the manager in charge may have told you with respect to these men failing to perform a full day's work while you weren't there. Did Mr. Clark ever mention to you anything about their failure to perform a full day's work after the strike?

A. Well, it is my understanding that during the period July 13, 14 and 15, that they loafed a great deal of the time. [642]

Q. Now, is that the only incident that Mr. Clark mentioned to you as having occurred after the strike?

A. No, I wouldn't say that it is.

Q. Can you think of any other?

A. Mr. Clark doesn't keep in daily communica-

(Testimony of Robert Dant.)

tion with me as to just what work each member of the plant does.

Q. I am not asking——

A. Mr. Clark is in full charge of the plant.

Q. I am not asking you to tell me everything that Mr. Clark knows, I am only asking you to tell me what Mr. Clark told you, and when Mr. Clark gets on the stand I will ask him.

A. Mr. Clark told me that these men had been fired for just cause, and the complaint had been filed against us by the union for doing so.

Examiner Winkler: Don't you think the witness has answered the question? I mean, apparently the witness knows of no other incidents as to which Mr. Clark advised him as to the so-called dereliction of duty by Christophersen and Gassner. What he knows is that a complaint was filed in this case, and the company submitted its answer to the effect that the men were discharged for cause. Is that your testimony, sir?

The Witness: That is correct.

Examiner Winkler: Now, let's not belabor the point.

Q. (By Mr. Tillman) Well, let's refer to the next defense, loafing on the job. As I understand some of your testimony, [643] failure to perform a full day's work, and loafing on the job are somewhat the same, is that right? Do you have in mind any other incidents of loafing on the job?

A. Not prior to the strike.

(Testimony of Robert Dant.)

Q. After the strike, was there any loafing, outside of July 13, 14, 15?

A. I don't feel qualified to answer that question.

Q. Were you advised by Mr. Clark or anyone else in management at the plant that there had been such loafing?

A. I think we are getting right back into the same thing again.

Q. I think you can state whether or not you were advised.

Examiner Winkler: Were you advised of any incidents Mr. Dant?

A. Of Loafing on the job?

Q. (By Mr. Tillman): Yes.

A. I don't recall particularly as being advised of any.

Q. Now, on the next allegation in the defense, leaving the job without permission or authority, you have already testified on direct examination that there were instances of that before the strike. Were you advised of any such instances after the strike?

A. I was advised that that had been done, yes.

Q. And, do you recall any occasions after the strike in which Gassner or Christopherson had left their job without permission? [644]

A. No, I am not familiar with the details of the matter at all.

Q. Do you recall which men you were advised had done that? A. No.

Q. On the matter of stalling, what did you have in mind by the defense of stalling? I mean, what

(Testimony of Robert Dant.)

incidents involving Gassner and Christopherson did you consider stalling?

A. I signed the complaint on the assurance and advice by Mr. Clark that the answer was correct, and I signed it as a partner in the company, which was required by the law. Mr. Clark can give you the full details, I believe, of the matters referred to, but I don't feel in position to do so myself, other than what I have already testified to up to the time of the strike.

Q. In that connection, was it Mr. Clark who made the decision to discharge these men?

A. I would say that Mr. Clark has full authority at the plant.

Q. Did you have any part in the decision?

A. No. I have never taken any part in the management of the plant since the time of the strike, and the hiring of Mr. Clark.

Q. With reference to your testimony that there had been a cross-check out at the plant, do you know whether that was conducted privately, or by the Labor Board?

A. It was sure private as far as I know. I wasn't present. I [645] was informed that a cross check had been made, and that everybody wanted to join the union, so we recognized the union and went on from there, proceeded to negotiate a contract with them. That was all there was to it.

Q. During the incident of the failure to fill up the kiln for a kiln charge, do you remember how many teams were working at the plant at that time?

(Testimony of Robert Dant.)

A. I believe two teams, but there could have been three.

Q. And, how were they paired off?

A. I am not acquainted with that.

Q. Are you acquainted with Mr. Erickson?

A. Yes.

Q. Do you know whether or not he was working with Max Gassner at that time?

A. No, I am not certain about that.

Q. Do you know who Henry Christopherson was working with at that time?

A. I believe—— I am not certain about that. Max Gassner could have been working with Erickson at that time.

Q. Are you positive Christopherson was there?

A. No, I am not.

Examiner Winkler: What do you mean by, "there"?

Mr. Tillman: There at the kiln that day.

Examiner Winkler: Whether he was supposed——

Mr. Tillman: Whether he was piling that day.

Examiner Winkler: Oh.

The Witness: I know I talked to Gassner, and his partner had already gone home. Mr. Simons was the foreman in charge of that particular operation on that day, and I was the general manager of the plant.

Q. Was it your impression that Max had been working with Henry?

A. Well, I know that whoever Max was working with had already gone on home; whether it was

(Testimony of Robert Dant.)

Henry or not I am not certain of. It could have been Erickson.

Q. How about the other piling teams, had they gone home too? A. I don't know.

Q. Do you know who made up the other piling team? A. No.

* * * * *

[647]

Q. At the time that you observed Max Gassner doing very poor work in piling, in the way of placing stickers, who was his partner?

A. I wouldn't be certain of that. I think I explained to the counsel that Max Gassner spoke for the pilers as their spokesman. My complaint was aimed at all of the pilers.

Q. You expected Max to take back your complaint to the other pilers I take it?

A. That is correct. Christopherson was at some of the meetings, he wasn't at all of them.

Examiner Winkler: I'd like to understand this now. Are you saying, Mr. Dant, that when you testified before as to faulty placing of stickers, and perhaps, also, as to the faulty making of the V, the inverted V, are you saying now that that was a complaint that was lodged against all the pilers, and that the complaint was made to Gassner and Christopherson because they were the spokesmen for the pilers at these various grievance meetings?

A. I think I brought that out at that time.

Examiner Winkler: That is your testimony?

A. I think, at that time, I brought that out.

* * * * *

[648]

(Testimony of Robert Dant.)

Q. (By Mr. Babcock): Mr. Dant, if I understand your testimony correctly the complaint that you made about the failure of the pilers to pile lumber in the yard, was during the period of the latter part of '47 and the summer of '48; spring and summer of '48, is that correct?

A. That was my—— the time when I spent the most time there, that I personally handled the labor negotiations, yes.

Q. Were those complaints made largely during '48 after Mr. Anderson left there? [650]

A. No, they were made a lot while Mr. Anderson was there.

Q. They continued afterwards? A. Yes.

Q. Did the pilers pile fours and sixes when they were given scale and a half?

A. Only very reluctantly, and if it was the last thing that was left in the yard to be piled.

Q. Had Anderson given them scale and a half to get them to pile the fours and sixes?

A. I understand so, yes.

Q. After he left, was that practice continued?

A. We attempted to discontinue that practice, because it didn't get the lumber piled before it was stained anyway.

* * * * *

Q. (By Mr. Babcock): In other words, did they want to be paid more for piling the fours and sixes?

Mr. Stirling: I believe he has already testified that they did in his direct examination. [651]

Mr. Babcock: Is that correct? Perhaps I didn't

(Testimony of Robert Dant.)

get that straight. Is that correct Mr. Dant?

A. They didn't particularly ask for more for piling fours and sixes, they just didn't want to have anything to do with them was about the size of the thing.

Q. The reason that they didn't pile them was because they couldn't make as much money piling them?

A. That was the excuse they gave.

Q. That would be the only reason, wouldn't it?

A. They would agree to pile the fours and sixes, and agree to pile the four-quarter when we got in the meeting, with Sullivan there giving them hob, and me there also. Then, after the meeting was over, and they would go out on the job, they would continue to disregard the fours and sixes, and the four-quarter.

Q. What I am trying to get at is that there was nothing inherently obnoxious about these fours and sixes, it was just that they didn't make much, as much money piling them, isn't that correct? Could they have had any other reason for not piling them except for the fact that they couldn't make as much money?

A. Well, they would agree to pile them for the same money, and they would not live up to their agreement.

Q. Wasn't there a dispute at one time after Anderson left about the fact that you weren't paying the scale-and-a-half [652] for that any more?

A. The company offered to revise the scale on

(Testimony of Robert Dant.)

the entire piling setup so that we would pay more for the narrower widths, and pay less for the wider widths, making it average out. But, the pilers would never agree to that.

Mr. Babcock: I think that is all.

Examiner Winkler: Mr. Stirling?

Redirect Examination

Q. (By Mr. Stirling): In other words, Mr. Dant, the agreement with the union was that there was to be a flat rate for all this piling?

A. That is correct.

Examiner Winkler: Agreement at what time?

Mr. Stirling: During 1949.

Examiner Winkler: I understand there was an agreement for a flat rate for all piling, then at sometime later the men were to receive scale-and-a-half for fours and sixes, and then the company—

The Witness: There was no agreement to that.

Examiner Winkler: That is what I want to understand. Was there an agreement to that effect?

The Witness: No.

Examiner Winkler: But Anderson had instituted that practice, is that the point?

The Witness: Anderson had done that from——

Examiner Winkler: In order to get the men to pile the fours and sixes?

The Witness: He didn't give them pay-and-a-half, he gave them scale-and-a-half.

(Testimony of Robert Dant.)

Examiner Winkler: Double the feet length?

The Witness: He would pay them for piling six thousand feet when they only piled four. [654]

* * * * *

Q. (By Mr. Stirling): Now, these managers, Redman and Cook, were they the men directly in charge of the pilers, or was there someone who was a supervisor over the pilers, and also a subordinate to Redman and Cook?

A. Well, we had various ones who attempted to run the pilers, but they were not very successful. Ordinarily, I would say that there was a subordinate who was in direct contact with the pilers, and was supposed to tell them what to do, and it would not be the position of the general manager, ordinarily, to, day by day, tell them specifically what to do each day.

Q. Then, how does it come that these men would be contacting either Redman or Cook, as has been brought out in the examination?

A. Well, they constantly circumvented anybody who attempted to assume that position directly over them.

Q. In other words, they went over the head of the man who was in charge of them?

A. That is correct. [657]

Examiner Winkler: Are we testifying now as to the existence of a yard foreman? I understand that Mr. Parker is the present yard foreman.

Mr. Stirling: Yes, at the present time.

Examiner Winkler: Who was the yard foreman

(Testimony of Robert Dant.)

before Mr. Parker, and specifically during the term of Mr. Cook's and Mr. Redman's regime at your plant? Do you understand my question?

Mr. Tillman: And, Mr. Dant's.

Examiner Winkler: And, during the time you were in charge, sir.

The Witness: Well, for a time Mr. Endicott was——

Examiner Winkler: Yard foreman.

The Witness: ——in general charge of the outside work, and a Mr. Troutman attempted to run that job. There were undoubtedly others which I don't——

Examiner Winkler: Recall.

The Witness: ——recall right at present. [658]

* * * * *

Recross Examination

Q. (By Mr. Tillman): How many others do you think there were Mr. Dant?

Examiner Winkler: How many other what?

Mr. Tillman: Following up the last question.

Examiner Winkler: How many other yard foremen were there before Mr. Parker?

Mr. Tillman: In addition to Endicott and Troutman.

Mr. Stirling: Over what period of time are you referring to?

Mr. Tillman: I don't care; how many others?

Mr. Stirling: I don't think he can be expected to answer that question.

Examiner Winkler: He may answer the question

(Testimony of Robert Dant.)

if he can. If he can't answer, obviously he can't. Do you know the answer to that? Who were the other yard foremen in addition to Endicott and Troutman to which you testified before?

The Witness: Mr. Simons was in charge of the kiln loading and discharging for a while. I believe Mr. Anderson, during his time as manager, acted largely as his own yard foreman, because, the pile at that time was quite small, and it wasn't until the plant assumed a much larger size than it had been that it was necessary to have more foremen on the job.

Q. (By Mr. Tillman): Do you recall under which managers Endicott was in general charge of outside work? [659]

A. He was there during the time I was there.

Q. Under any other manager?

A. Well, he was there during the entire year '48.

Q. Was he there in another capacity, or as outside—— A. I was office manager.

Q. How long had he been office manager?

A. I think he came there when we rebuilt the plant in '45.

Q. Was he carrying on a dual function under you then as office manager and in charge of outside work?

A. He had help there, help with the office work.

* * * * *

Q. (By Mr. Babcock): When they were doing the square piling, did some of the lumber that was

(Testimony of Robert Dant.)

received go to the kilns? A. Yes, sir. [660]

Q. Where was the lumber dumped, ordinarily, by the trucks, that was to be loaded for the kiln?

A. It was dumped along the track on which the kiln cars run. The track extends through the kiln, and out in front of the kiln. It is a regular railroad track. The lumber was dumped alongside of it so that a piling machine could be put in between [661] the load and the kiln truck in order to load the kiln truck.

Q. Was the machine used to load the kiln truck?

A. Yes, sir.

Q. Now, were there occasions when truckloads of lumber were brought into the yard and placed on jacks until it could be determined what use was to be made of it, or where the lumber was to be piled, and where it was to go?

A. Sometimes when the kiln had a load at each truck, the lumber was put on jacks until the determination could be made, or until the load that was there at the kiln could be piled on to the truck, after which time another load would be brought over and dumped at the kiln in order to complete the kiln truck.

Q. Now, when the lumber was dumped, or rather unloaded on jacks, was it the job of the pilers to decide how that lumber was to be piled, or what use was to be made of it, or was it the job of somebody else?

A. No, that is something we kept to ourselves; that is one thing we handled.

(Testimony of Robert Dant.)

Q. And, on those occasions the pilers would have to get instructions with respect to what was to be done with the lumber before they could load it or pile it?

A. That is correct. The lumber would have to be moved off of the jacks before it could be piled. [662]

* * * * *

Q. (By Mr. Babcock): When there was lumber in the yard, talking now of the time when you were still doing the square piling, when there was lumber in the yard, and also at the kiln, did the pilers receive instructions from some supervisory personnel as to what work they were to do first as to when they were to load the kilns?

A. They were instructed when they were to load the kilns. Generally, in the yard they were left pretty much to their own devices, the idea being that lumber was required to be piled every day.

* * * * *

[663]

JAMES BLOOM

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Stirling): What is your name and address Mr. Bloom?

A. James Bloom, Box 101-B, Redmond, Oregon.

Q. And, are you employed by Dant & Russell?

A. That is correct.

Q. And, what is your capacity.

A. Assistant manager.

Q. And, in the course of your job as assistant

(Testimony of James Bloom.)

manager, do you have occasion to take inventory of the lumber in the yard from time to time?

A. Every month. [664]

Q. Are you acquainted with the particular piles of lumber that Christopherson and Gassner were working on on July 13, 14 and 15?

A. Yes, I am.

Q. And, did you take an inventory of those piles?

A. I took it along with Lawrence Toumui, a fellow I work with.

Q. I ask you first to identify this set of papers. What is that?

A. That is the original papers that we would take a monthly inventory on. It constitutes the total amount of lumber in the yard.

Examiner Winkler: In order to get this thing properly in the record, are you going to submit it in evidence?

Mr. Stirling: Yes, sir.

Examiner Winkler: I suggest that we give it an identification mark now, then.

Mr. Stirling: I am not going to submit the whole thing, just the sheet that has the three piles on it.

Examiner Winkler: All right.

Mr. Stirling: But, I wanted to have him identify the whole thing to show what it was.

Q. (By Mr. Stirling): And, for what month is that inventory?

A. That is for the month of February.

Q. And, were those three piles in the yard at

(Testimony of James Bloom.)

that time? A. They were, yes. [665]

* * * * *

Mr. Stirling: I would like to offer this in evidence as an inventory of the piles upon which Gassner and Christopherson worked on July 13, 14 and 15.

Examiner Winkler: First of all, the document you have offered in evidence is the one from which the witness has been testifying?

Mr. Stirling: Yes, sir.

Examiner Winkler: Would you mark this——

Mr. Stirling: I think it is Respondent's Exhibit 1. [666]

* * * * *

Mr. Stirling: I think that in the testimony of the complainant's witnesses, the General Counsel's witnesses, it was explained that one of the piles had been partially torn down; and, when Mr. Parker has said that it is fifty thousand, and General Counsel's people said it was about fifty thousand left, the parties are in agreement that that was what was left. But, [671] the inventory shows us exactly, it is'nt a matter of guess. It shows us exactly what was in those three piles prior to Bauer working on the pile; and Bauer and his partner Les Shellhorn working on the piles, and he has estimated what he did with the piles. There has been evidence brought forth, on the part of the General Counsel, to the effect that these men were doing a full day's work, and that they piled a sufficient number of

(Testimony of James Bloom.)

board feet, etc., so I don't think that there is any question but that the inventory is pertinent.

You, yourself have asked for it Mr. Examiner. I mean you have asked from time to time if we planned to submit a inventory of those piles.

Examiner Winkler: I will frankly tell all the parties that I asked for this at the beginning before we went into the testimony—everybody was giving us estimates as to the amount of the footage in this lumber—to save all the testimony we have already taken.

Q. (By Examiner Winkler): Mr. Bloom, there are two big columns on this Respondent's Exhibit No. 1. Now, I direct your attention to the second column. Does this contain the figures as to the three piles that the men worked on in July, '49?

A. That is correct.

Q. And, according to this inventory there were 56,120 feet? A. That is correct.

Examiner Winkler: Now, is Respondent merely offering this [672] inventory to show the amount of lumber that was in those three piles on that day; on those three days rather?

Mr. Stirling: Yes, that is the purpose of it.

Examiner Winkler: Any objection? There are objections? They are overruled.

Mr. Tillman: Same objections.

Mr. Babcock: Same objection.

Mr. Tillman: I make the further objection that his witness has certainly not qualified himself to

(Testimony of James Bloom.)

show he is any better at scaling piles than witnesses we produced.

Examiner Winkler: Off the record please.

(Discussion off the record.)

Examiner Winkler: On the record. It is received in evidence as Respondent's Exhibit 1.

(Whereupon, the document heretofore marked as Respondent's Exhibit No. 1 for identification was received in evidence.)

(Testimony of James Bloom.)

Q. (By Mr. Stirling): And, does that represent an inventory of the three piles on which Max Gassner and Hank Christopherson worked on July 13th, 14th and 15th? A. That is right. [673]

* * * * *

EDWARD F. ENDIKOTT

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Stirling): What is your address Mr. Endikott?

A. Box 667, Redmond.

Q. Have you been employed by Dant & Russell at any time? A. Yes, sir; I have.

Q. During what period were you employed by Dant & Russell?

A. From February, 1946 until the strike in 1948. I believe it was October.

Q. (By Examiner Winkler): Until after the strike or before?

A. Until the time of the strike.

Q. (By Mr. Stirling): And, in what capacity were you employed? A. Office manager. [674]

Q. In connection with your work as office manager, did you have any other duties?

A. During the period that Mr. Dant was active manager of the plant I helped him in assigning certain work to crews and also in determining which order to run, and what lumber would be run on the orders.

(Testimony of Edward F. Endikott.)

Q. You mean you assigned crews to work?

A. At certain times I assisted in that, yes.

Q. Did you assign piling crews to work?

A. As far as the piling crews are concerned, their job was to pile the lumber that was on hand, and I don't believe there was any designation made to tell any particular crew to pile any special load of lumber. [675]

* * * * *

Q. And, then you had occasion to go out in the yard and observe the pilers piling?

A. Yes, I made a trip through the yard, especially when Mr. Dant was manager I took trips through the yard quite regularly.

Q. What do you mean quite regularly?

A. Probably once a day. Before that time it wasn't that often.

Q. And, did you have opportunity to observe the piling that was being done at that time?

A. Yes, I did.

Q. And, did you have an opportunity to observe whether the piling was being done properly at that time?

Examiner Winkler: Would you know whether piling was done properly or not?

A. I believe I would. As far as properly is concerned, the [677] piles were, I believe, as Mr. Dant testified in his testimony, the piles were crooked; the chimneys weren't straight, and occasionally stickers had been left out, and, also, occasionally green stickers had been used.

(Testimony of Edward F. Endikott.)

Q. What is wrong with using green stickers?

A. Well, it means that the boards piled and also the stickers that are piled are both green, and they both don't cure. It causes stain on the board that is trying to be cured.

Q. And, would those stickers, green stickers be in piles that were being piled by either Hank Christopherson or Max Gassner?

Examiner Winkler: In respective teams you mean?

Mr. Babcock: I object to that unless some foundation is shown for the knowledge of this witness as to who piled each particular pile, and who put the stickers in.

Q. (By Mr. Stirling): Who piled the piles you are referring to?

A. Most of the time there were two crews composed of Max Gassner and Erickson, and Han Christopherson and Mike Gassner.

Q. And, were they the crews at the time you observed green stickers in the piles?

A. They would be during that period, yes.

Q. Would you know whether or not the green stickers had been placed there by either Max Gassner or Hank Christopherson?

A. The way that usually occurred was that if there wasn't a pile, a load of dry stickers available or—I wouldn't say available, but at hand, close at hand, then, anything was [678] used that was there, whether it was green or dry or anything else; anything to get the pile up.

(Testimony of Edward F. Endikott.)

Examiner Winkler: Would you please answer the question. Read the question back to the witness.

The Witness: Could I have the question restated please?

(Whereupon the reporter read the last question.)

Examiner Winkler: By, "placed there", do you mean placed in the piles themselves?

Mr. Stirling: Yes, sir.

The Witness: I believe it would be, yes, because they were the only two crews working. It would have to be them.

Q. (By Mr. Stirling): You mean that at least they were guilty of it, is that what you mean?

A. Yes, sir.

* * * * *

Q. Did you have occasion to have dealing or conversations with Max Gassner and Hank Christipherson during——

A. About every day. All the crews of pilers were in the office about—at quitting time they'd come in to leave their scale tickets, and so——[679]

Q. Yes.

A. —so during the process of those things I did have dealings with them; yes, sir.

Q. About every day?

A. Almost every day.

Q. And, was there anything particularly unusual about your conversations with them?

A. Particularly during the time Mr. Redman

(Testimony of Edward F. Endikott.)

was in, and also Mr. Cook, there was constant complaints on scale, and on the money paid to them. They thought they needed more money on the four-quarter, and would be unhappy if shorts were mixed with the regular loads, and, I believe that we can say that constantly there was complaints in the office. It didn't occur very often during Mr. Anderson's management, however. [680]

* * * * *

Q. (By Mr. Stirling): Well, were all of the complaints dealing with asking for a higher rate for the fours and sixes, or were some of them of another nature?

A. They were of another nature as well as complaints on the four-quarter, yes. There would be objections to the scale they were getting and the scale that they had been able to pile on any particular day. They thought they should pile more for the work they did. There were complaints on where the loads were spotted.

Examiner Winkler: What do you mean by where the loads were spotted?

A. If they were too far away from the pile, or too close to the pile or not quite in the center of the pile, or if they were spilled; complaints on all those matters.

Q. (By Mr. Stirling): And, how did they go about making these complaints, did they make them to you or in your presence to someone else, or——

A. I would say both; that is right.

Q. Who else did they make them to?

(Testimony of Edward F. Endikott.)

A. Mr. Cook, Mr. Redman and Mr. Dant, particularly.

Q. And, what were they told with respect to the complaints?

A. Usually they were told that if the condition could be [682] corrected, such as loads improperly spotted, that we would try to correct it. Sometimes, however, if they were after more scale, or thought they should get a little more money, they were told it would have to be negotiated and just——

Q. Then, would they ask for a negotiation meeting?

A. I can't remember any particular instance when they asked for a negotiation meeting. However, we had them quite regularly, so I don't believe there was any reason to request it.

Examiner Winkler: What do you mean by, "negotiation meeting"?

A. The union has a grievance committee.

Examiner Winkler: You mean the meeting of the management committee with the union committee?

A. That is right.

Q. (By Mr. Stirling): Were you there on any occasions when there was no piling for them to do but other work available?

A. Yes, I believe so. There were sometimes, if the mill had been down in Sisters, there wouldn't be any lumber to pile, and we'd ask them to tear down dry lumber, or, if that wasn't available, well, we would try to make it so they would have a job so they wouldn't have to go home if they didn't want to.

(Testimony of Edward F. Endikott.)

Q. And, did they accept the day labor work?

A. Sometimes, and sometimes not.

Q. In other words, on occasions when there wasn't any piling they were offered day labor work and they did turn it down, [683] is that correct?

A. There would be occasion like that, yes.

Q. Now, do you recall any matters with respect to the kiln involving these men?

A. Well, I remember about, oh, every time Mr. Dant would come up, well, especially during the period when Mr. Redman and himself were acting as manager; would make a trip to the kiln and inspect the piling. I remember one particular time when there had been a kiln truck completed, ready to go into the kiln, and it was stacked on where it would be in the way if the pilers wanted to pile some more, so they hooked the piling machine on it and moved it, and——

Q. And, what is wrong with that?

A. Well, a piling machine isn't made to do heavy loads, it is made to pile lumber, and it probably would tend to tear the machine to pieces by towing those heavy loads with it.

Examiner Winkler: Who did this?

A. The pilers.

Examiner Winkler: Which pilers?

A. I would say probably both crews that were working at that time.

Examiner Winkler: You don't know which pilers did it? A. I remember one specific instance.

Examiner Winkler: Let's talk about the instance to which you just testified. [684]

(Testimony of Edward F. Endikott.)

A. That incident was Erickson and Gassner.

Examiner Winkler: You know it was them that did that? A. That is right.

Q. (By Mr. Stirling): What were they supposed to pile those kiln trucks with?

A. There was two trucks available, one International and one Ford which they could use to move those loads, and, also, quite often, they used carriers to push them with, too.

* * * * *

Q. (By Mr. Stirling): Was anybody present besides yourself when you saw them pulling the truck with the machine piler?

A. On this particular occasion Mr. Dant was present, that is the reason I remember it.

Q. What do you recall of it?

A. I remember he told them not to do it anymore, that it was—in no uncertain terms he told them that. That is probably the reason that I remember it so well.

Examiner Winkler: Do you recall that they did it after that? [685]

A. I never saw them do it after that.

Q. (By Mr. Stirling): That is all that he said?

A. I believe it is. He told them that they were not to do it anymore or else they would lose their job.

* * * * *

Cross-Examination

Q. (By Mr. Tillman): Mr. Endikott, at any time during your employment with Dant & Russell were there more than two piling teams?

(Testimony of Edward F. Endikott.)

A. Yes, I believe so. [686]

* * * * *

Q. Do you remember, then, if there were three crews when you were acting as yard supervisor?

A. No, I don't; I don't remember.

Q. Could there have been three?

A. Possibly could have been, yes. [687]

* * * * *

Q. Do you know who was piling with Max Gassner when you observed any crooked chimneys and piles he had piled?

A. His regular partner was Erickson. [689]

Q. And, do you know who was piling with Henry Christopherson?

A. His regular partner was Mike Gassner.

Q. At that time?

Examiner Winkler: Mike Gassner.

A. Yes.

Q. (By Mr. Tillman): Were you in any position to know which of the two on any team was responsible for the chimneys?

A. Which of the crews you mean?

Q. Which of the two on a crew were responsible; which member of a crew?

A. They took turns piling on the pile; one man would put the lumber on the machine and the other one on the pile. Whoever was on the pile would be responsible.

Q. And in your observation around there, what was the practice with regard to which man was on the pile? Take Max's team for instance.

(Testimony of Edward F. Endikott.)

A. I believe they took turns.

Q. So, on any given pile both members of the team would have been on that pile before it was finished?

A. I believe so.

Q. Now then, my question is whether you are able to tell which of the two was responsible for the crooked chimney? A. No.

Q. How about the crooked pile?

A. No. [690]

Q. That would be true of the team of Henry Christopherson and Mike Gassner?

A. It would be true of them too.

Q. Do you recall any other piler's names besides the four that have been mentioned?

A. I believe Les Shellhorn piled a while, but I don't recall who his partner would be. And, I also remember that Otto Bauer piled some.

Q. Do you remember Pavinsky piling?

A. Yes, he piled too.

Q. Kramer? A. Yes.

Q. How about Toumi?

A. I believe in '47. I don't know whether he piled in '48 or not, but there was a time when he piled when I was there, yes.

Q. How about Mr. Parker.

A. Mr. Parker piled some too.

Q. Did you observe crooked piles from any of these other fellows?

A. Well, when I talked about crooked piles, I talked about piles in general.

Examiner Winkler: Are you now saying that

(Testimony of Edward F. Endikott.)

when you saw crooked piles you didn't see the crooked piles specifically of the work of Gassner and his partner, but you saw crooked piles, and there were crooked piles of some unidentified pilers? [691]

A. No, I don't believe so. I believe they would have to be those two, because they were the regular crews. It would be those along with some of the other crews too.

Q. (By Mr. Tillman): If there were three crews at the time, then it would be possibly all three crews?

A. That is correct.

Q. In your position under Mr. Dant, when you were not only office manager, but sort of helping out around the yard, did you, yourself, go down and give any direct orders to the pilers?

A. No. As I stated before this, they were to pile the lumber in the yard, and they were to pile where it had been spotted, so they needed no orders, particularly, except to see that the lumber was all piled.

Q. Did you give them any orders?

A. I don't recall of any. [692]

* * * * *

Mr. Tillman: No other questions.

Examiner Winkler: Mr. Babcock?

Mr. Babcock: Yes. [693]

* * * * *

Q. Now, when these pilers came in the office and made these various complaints, did they, from time to time, complain about the fact that there weren't stickers available at all times?

A. Yes, that was one of their complaints.

(Testimony of Edward F. Endikott.)

Q. When you walked through the yard on the occasions you mentioned, and observed the pile, was each and every pile defective in some way?

A. No, I wouldn't say that they were all defective, just—— [694]

Q. Just some of them?

A. —just some of them.

Q. And, some were crooked?

A. That is right.

Q. Some had crooked chimneys?

A. Yes, sir.

Q. And, I think you said sometimes they used green stickers? A. Yes, sir.

Q. You couldn't tell from that observation what team had piled any particular pile? A. No.

Q. And, you couldn't tell, of course, what member of a particular team had been doing that particular work that might have led to that? A. No.

Mr. Babcock: That is all. [695]

* * * * *

Examiner Winkler: I have one question. What was the complaint of the men when they were complaining about the unavailability of stickers? [696]

A. I think probably their main complaint was carrier service. You see, the stickers are delivered to the pilers——

Examiner Winkler: To the men where they are piling?

A. That is right. —by the carriers.

Examiner Winkler: How often are these supposed to be delivered in order for work to be done

(Testimony of Edward F. Endikott.)

efficiently? Who is responsible for the delivery of the stickers?

A. It is the responsibility of the pilers and the carrier driver together.

Examiner Winkler: You mean the piler is supposed to contact the carrier driver?

A. Call the attention of the carrier driver.

Examiner Winkler: Why were they complaining; wasn't that their own responsibility?

A. Yes, it was. I believe the main complaint was that the carriers didn't visit them often enough. [697]

* * * * *

PETE TRAUTMAN

a witness called by and on behalf of Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Examiner Winkler): Give your name and address to the reporter please.

A. Pete Trautman, Redmond.

Q. (By Mr. Stirling): Mr. Trautman, are you an employee of Dant and Russell? A. Yes, sir.

Q. How long have you been an employee at Dant and Russell?

A. A little better than three years.

Q. And, during that time what positions have you held?

A. Well, I was grader and then foreman.

Q. And, during what period of time were you foreman?

(Testimony of Pete Trautman.)

A. Matter of some—about April '49 until—April '48 until April of '49 again.

Q. And, in your job as foreman, did that include work as a yard foreman? [698]

A. Yes, sir.

Q. And, did you have Max Gassner and Hank Christopherson under you? A. That is right.

Q. Now, during that time you were foreman, were there any occasions when these men failed to do their work properly?

A. Well, I had trouble, quarreled with them about the way they piled the lumber, that is true.

Examiner Winkler: When you say, "them", are your talking about all the pilers, or are you talking about the two men involved in this proceedings? Please tell us, when you are giving your testimony, as to which persons you are referring to.

A. Well, that is——

Mr. Stirling: Well, let me——

A. Well, that is all the pilers in some way, I imagine, because the lumber is all coming in together. But, then there was two in particular.

Q. (By Mr. Stirling): What do you mean by that?

A. Well, there is Max for one, that is implicated here.

Q. You mean there were two in particular that didn't pile properly? A. That is right.

Q. Well, who are the two in particular you are referring to?

A. Well, Max and Slim Erickson were partners

(Testimony of Pete Trautman.)

at that time that [699] I had the most trouble with.

Q. You mean with that team? A. Yes, sir.

Q. What was the trouble you had with them?

A. Well, I don't know, we just seemed to tangle more or less.

Examiner Winkler: Seemed to what?

A. We didn't get along too well for some reason, you might say.

Q. (By Mr. Stirling): Well, did you give them orders? A. Yes, sir.

Examiner Winkler: Will you tell us in what respect you didn't get along?

A. Oh, I will have to think that over. I have quarreled quite a bit about the way they laid their stickers, mainly.

Q. (By Mr. Stirling): Did you complain to them about the way they were laying their stickers?

A. Yes, sir.

Q. What was wrong with the way they were laying their stickers?

A. Well, they didn't line them up too good.

Q. And, after you told them, did they line them up better? A. No.

Q. And, did you tell them to line them up on more than one occasion?

A. Well I know I didn't really tell them, I just asked them.

Q. Well, did you do that on more than one occasion? [700]

A. Yes, I imagine that I have.

Q. Did you do it on several?

(Testimony of Pete Trautman.)

A. Well, I couldn't say just—probably several, yes.

Q. And, at any time after you told them, did they do as you asked them? A. No.

Q. Did you have any other problems in connection with Max Gassner?

A. No, not that I can recall. That was the main reason. And, of course, we had a little trouble with them trying to get them to pile the four-quarter.

Q. You mean the four-quarter thickness lumber?

A. That is right.

Q. What trouble?

A. Of course they piled it. I don't mean we had trouble to pile it, but they would leave that until quite a while, and pile the better stuff.

Q. What would be the result of them leaving that?

Examiner Winkler: Who is, "they"?

Mr. Stirling: I had asked him about——

A. The pilers.

Q. (By Mr. Stirling): Who are you referring to when you say "they"?

A. Well, the pilers as a whole; that is all.

Q. And, when you would ask them to pile it, would they go out [701] and pile it?

A. Well, that is——

Mr. Tillman: Just a moment. The question is assuming something not in evidence.

Mr. Stirling: I think he has already stated he would ask them to pile it, hasn't he?

Examiner Winkler: I don't think his testimony shows that. You might ask the witness.

(Testimony of Pete Trautman.)

A. Well, I don't know just what to——

Examiner Winkler: Your attorney is going to have to ask the questions.

Q. (By Mr. Stirling): Did you ask them to pile this four-quarter lumber?

A. No, I don't know as I did particularly ask them to pile the four-quarter. I can't recollect that I did just in any particular case.

* * * * *

Q. What do you mean they would leave it lay back?

A. Well, they'd leave it and take the others until they got everything piled and maybe it would lay there quite a while before they'd get it. [702]

Q. What do you mean by, 'quite a while"?

A. Oh, several weeks.

Q. Would any of that lumber stain as a result of—— A. Well——

Q. —laying there? Would anything happen to the lumber because it was laying there?

A. I always figured it caused it to stain.

Examiner Winkler: It might cause it to stain, or did cause it to stain?

A. Well, that is the argument; they said it didn't and I said it did.

Q. (By Mr. Stirling): You mean they argued with you about whether they should go down and pile it or not?

A. No, they claimed that isn't what caused it to stain.

(Testimony of Pete Trautman.)

Q. You say leaving it in the pile was what caused it to stain?

A. In solid piles. I still say it caused it to stain, yes.

Q. When you would complain to them or ask them to do this piling, what would be their answer to you? Do you remember any particular, specific instance?

A. No, I really can't say I do. That is only that it went on as they were going, anyhow.

Q. What do you mean they went on as they were going?

A. Well, they just did as they always have; it didn't seem to have any effect. [703]

Q. Do you know of any occasion when Max Gassner or Hank Christopherson left early, earlier than they should have?

A. Yes, they did that quite often; that is, left early when there was quite a bit of lumber to pile, if you would call that that.

Q. Did you speak to them about that?

A. No.

Q. What do you mean they left earlier when there was quite a bit of lumber to pile; how early did they leave?

A. One day they left at noon, and I took an estimate of approximately two hundred feet of lumber they should have piled.

Examiner Winkler: What time of the year was that?

(Testimony of Pete Trautman.)

A. I can't keep—I didn't keep any dates, because I didn't——

Examiner Winkler: Was this in 1948?

A. During the time that I was foreman.

Examiner Winkler: During the period from April '48 to April '49? A. What?

Examiner Winkler: During the period from April '48—— A. That is right.

Examiner Winkler: And, you can't tell us when during that period; at the beginning of the period, the middle of the period or at the end of that period?

A. No, I can't; I didn't keep track, because I didn't have to. [704]

* * * * *

Cross-Examination

Q. (By Mr. Babcock): On this occasion when you say that the men left early when there was about two-hundred thousand feet piled, did all of the crews leave early? A. Yes, sir.

Q. Each piling crew?

A. That is the piling crews.

Q. That is what I mean, piling crews. All of them? A. Yes, sir.

Q. How many were there then?

A. We switched back from four to six there, and had a spare [706] piling crew. Why, I couldn't say whether on that particular day we had a spare or not, but there was four or six.

Q. During most of that time weren't there six pilers working?

A. Yes, I believe there was, but one of them was considered a spare.

(Testimony of Pete Trautman.)

Q. I mean not counting the spare, weren't there three regular teams during most of that period?

A. I don't remember that either.

Q. Do you remember that Max Gassner and Mike Gassner and Erickson and Pavinsky and Kramer——

A. Yes, that is right.

Q. —were working? A. That is right.

Q. And, in addition to them, weren't Parker and Toumi working during part of that time?

A. Parker, Toumie; then there was Shellhorn and what do you call them?

Q. Bauer. They came a little later, didn't they?

A. There was three, I am pretty sure.

Q. Three regular crews and a spare crew during part of the time?

A. There was, I believe.

Q. So, any complaint that you may have had about the men leaving early wasn't directed just against Max Gassner and Hank Christopherson, it would apply to the whole crew? [707]

A. Well, yes, they all left. I wouldn't say that it was——Who the cause was I wouldn't know.

* * * * *

Examiner Winkler: I have one question.

Q. (By Examiner Winkler): At the time when these men left early, was that in connection with the situation when the pilers had some dispute as to where the lumber was to be piled?

A. Well, I don't see how it could be, because there was plenty of lumber at piles all the time that

(Testimony of Pete Trautman.)

I know of, and it [708] couldn't be moved that I know of after it was on the ground.

Q. The reason I ask you that is because there has been testimony here that at one time there was controversy between the pilers and management, the pilers contending that management didn't tell them where to pile the lumber. I want to know whether the incident to which you testified was that same occasion?

A. No, that was no connection whatsoever.

* * * * *

VICTOR CLARK

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Stirling): Will you give your name and address Mr. Clark?

A. Victor Clark, North Canyon Drive, Redmond, Oregon.

Q. And, are you an employee of Dant & Russell?

A. I am.

Q. How long have you been an employee of Dant & Russell's?

A. I have been an employee of Dant & Russell since May of 1939, with about 18 months that I was on another lumber position and [709] returned to Dant & Russell Ltd. December 1st, 1948.

Q. And, what is your position at the Dant & Russell, Redmond Plant?

A. At the present time?

(Testimony of Victor Clark.)

Q. Yes. A. The general manager.

Q. How long have you been in that position?

A. Since December 1st, 1948.

* * * * *

Q. Now, did you give the order to discharge Max Gassner and Hank Christopherson.

A. I did.

Q. And, why did you give that order?

A. Because my foreman, Mr. Parker, stated that these men were [710] loafing on the job.

Q. Were there other reasons for the discharge?

A. Than the loafing?

Q. Yes.

A. Well, the loafing, as I was informed by the foreman, was sitting in the car and not turning out what I consider a day's work.

Q. No, but I mean Mr. Clark—you are referring to what took place on July 13, 14, and 15, were you not? A. Yes, sir; that is right.

Q. And, were the men discharged only because of what took place on those days?

A. That is right [711]

* * * * *

Q. (By Mr. Stirling): How were the circumstances of the loafing reported to you?

A. I was out of town at the time that the incident happened. I was in Vancouver, in the office, which is a habit of all of us in charge of mills to call in once a day and see how things are going along. And, I was talking to Mr. Parker and he related [712] the incident that he had with these men in question, Max

(Testimony of Victor Clark.)

Gassner and Henry Christophenson; down piling dry lumber.

Q. Piling dry lumber? A. Down piling.

Q. Down piling?

A. Piling dry lumber. And, they had consistently loafed on the job. This was on a Friday afternoon, incidentally, that this partieular conversation took place. He wanted to know what to do about it. I asked him what the circumstances was, and he related it to me on the phone. I told him if they were loafing on the job to discharge them; I am giving the order of discharge, and I would be back to the office on Monday morning; and have the checks prepared for my signature, which was done.

Q. Do you recall about what time of the day you talked to him?

A. This was late in the afternoon; I'd say 3:30 perhaps.

Q. And, then what occurred with respect to the discharges after that? Hank Christopherson and Max Gassner have testified that they brought their complaints, or they filed a complaint with respect to the discharge. Do you recall that?

A. Yes, they did. I believe it was on Monday, that I returned, and their checks were given to them, that we had a meeting of the shop committee, or the standing committee of the union along with Fordham in my office. [713]

Q. Was this on Monday, sir?

A. On Monday, yes.

(Testimony of Victor Clark.)

Q. Do you recall who was present at that meeting?

A. I believe on the part of the union was Albert Congor and George Brown, Otto Bauer, Henry Christopherson, Bill Fordham. That was for the union. On the part of management was Mr. Parker, Mr. Bloom and myself.

Q. And, what took place at that meeting?

A. There was a difference of opinion, needless to say. Management maintained that the men in question hadn't performed; the union standing committee took the position that they did. It wound up in a deadlock; there was nothing to be gained. So, in settling of the strike one of the stipulations that both the union and myself and Mr. Meinke agreed upon was that at any time there was a difference of opinions on the part of the standing committee or the management, that we'd call in The U.S. Conciliation Service. I told the boys that we weren't getting anywhere and Mr. Fordham agreed with me. We decided to call in the Conciliation Service.

I immediately called in Mr. Meinke at that time and told him the situation, and he said he would carry on from there in the part of getting the Conciliation Service notified.

Q. Before we go any further, did Mr. Parker have any authority to fire or to discharge employees at that time?

A. Yes, he did. However, I believe there was a little [714] misunderstanding. When he took over the job I told him he had full authority as far as the yard

(Testimony of Victor Clark.)

foreman. Prior to that time I had withdrawn any authority from anyone in the discharging of men, immediately after the strike, feeling that there might be a situation arise that would be embarrassing for both employees and management. But, at the time that Mr. Parker was given the job as yard foreman he was also given the authority to discharge any employee not performing.

* * * * *

Examiner Winkler: Did he call you?

A. I called him at the office.

Mr. Stirling: Excuse me.

Q. (By Mr. Stirling): Just what did he ask in that telephone conversation?

A. He related the incident and asked me what he should do, and I said, "Well, you have the authority to discharge anyone there under your authority in the yard." He said, "I just wanted that clarified." Up until that time we had had no incident that would cause any clarification. [715]

Q. Then, you say that the Conciliation Service was called in, was it? A. They were.

Q. And, you had another meeting?

A. Yes, we did.

Q. At which time these discharges were brought up as a grievance? A. That is right.

Q. And, do you recall who was at that meeting?

A. For the union; Mr. Sullivan; Mr. Fordham; Mr. Congor; Mr. Bauer; Brown, and I am reasonably sure that Joe Huber was there for the union. On the part of the management was Mr. Bloom; Mr.

(Testimony of Victor Clark.)

Parker; Mr. Meinke and myself. On the part of the U. S. Conciliation Service was U. S. Commissioner Walker.

Q. What took place at that meeting?

A. The discussion of the matter of the discharge of these employees.

Q. And, did the union representatives claim, in the course of the meeting, that either of these men had been discharged because of their union activities?

A. Not in the course of the meeting; at no time. The sole matter that was discussed with Mr. Meinke as spokesman for management and Mr. Sullivan as spokesman for the union, was the question of what constituted a day's work, and whether or not these men were loafing. The union would maintain that inasmuch [716] as they were not on their regular job that they'd performed a day's work. Our position was that it was pretty hard to see where they had performed a day's work when part of the time was used up in sitting in their automobile, which was hard for us to follow their line of thinking.

We got nowhere very rapidly for some two hours in discussion late at night. We were called in first, I believe. Mr. Walker discussed the matter with us; with the company I have reference to, and then asked me if I would clear my office so they would be able to have a caucus, which they did. And, finally we were called back in and we still seemed to be at a stalemate on the matter. And, at that time Mr. Sullivan spoke up and stated that he was preferring charges against us in the NLRB for discrimination for union acti-

(Testimony of Victor Clark.)

vities as the cause of discharge of the men.

* * * * *

Examiner Winkler: Sustained.

Did you have a written agreement concerning the settlement of grievances?

A. I believe there is a supplemental agreement. The part that any serious—— [717]

Examiner Winkler: Apart from what it contains, I am trying to ascertain whether you did have a written agreement dealing with grievances.

A. With the union?

Examiner Winkler: Yes. A. Yes, we did.

Examiner Winkler: Was that a signed agreement between the company and the union?

A. I believe it is. I believe you will find that it is a supplemental part of the contract. [718]

* * * * *

Mr. Stirling: Q. Mr. Clark, would you know whether or not that is a copy of a supplemental agreement entered into by and between the union and Dant & Russell?

A. Yes, sir; I am sure it is. In fact, there might be some [720] small changes, but that, in effect, was the agreement that Mr. Meinke and Mr. Sullivan arrived at that afternoon that we settled the strike on December the ninth.

Examiner Winkler: Would the reporter please mark this as Respondent's Exhibit for Identification Number 2?

(Whereupon, the document above referred to was Marked Respondent's Exhibit No. 2 for identification.)

(Testimony of Victor Clark.)

Q. (By Mr. Stirling): I direct your attention to Paragraph 3 of this copy of the supplemental agreement. Is that the grievance procedure now in effect?

A. That is right. If a grievance of any consequence came up that Mr. Fordham and the standing committee and the management are not able to settle amicably.

Q. And, I might state that this paragraph three provides that a grievance committee a commissioner and the U. S. Conciliation Service——

Examiner Winkler: That hasn't been admitted in evidence yet.

Mr. Stirling: Excuse me?

Examiner Winkler: There is no offer before me to receive it.

Mr. Babcock: Are you offering it?

Mr. Tillman: I wish to make an objection, the same objection I made when the same offer was made by Mr. Babcock. I regard both the original contract and this supplemental [721] agreement to be immaterial to the issues in this proceedings.

Examiner Winkler: Do you have any objection on the basis of the authenticity of this document? Have you any objection on that?

Mr. Babcock: No, I have taken the position that this was an exact copy of the original signed agreement.

The Witness: It could be.

Mr. Babcock: It seems to me that we ought to be cleared on that point.

The Witness: We have no signed copy in our records or files.

(Testimony of Victor Clark.)

Mr. Babcock: I might say that Mr. Sullivan informed me that he was the representative of the union that was present, and that this was an exact copy and was typed in Mr. Meinke's office, the original of it, and, of course, that is a carbon.

Examiner Winkler: Mr. Stirling, are you now submitting this? By, "this" I refer to Respondent's Exhibit 2 for identification, as the supplemental agreement on the strike settlement.

Mr. Stirling: Yes.

Mr. Babcock: I would like to ask the witness one question before I complete my statement on it, which I think is needed to clarify it if it is going to be received. May I be permitted to do that?

Examiner Winkler: Yes. [722]

Q. (By Mr. Babcock): I think you said, in effect that section 3 of this was an amendment of the grievance clause of the original contract, is that what you said?

A. Well, that was my understanding.

Q. Isn't it a fact that this was not intended to completely supplant that clause, but was intended to amend the last paragraph of Article 6 of the regular agreement; in other words, the first two paragraphs were to remain in effect as they were?

A. That is right.

Mr. Babcock: I have no objection to the exhibit.

Examiner Winkler: Is it now agreed by all the parties that Respondent's Exhibit for identification Number 2 is the memorandum agreement of the strike settlement between the parties, and that paragraph

(Testimony of Victor Clark.)

numbered three of the memorandum agreement is intended as a supplmental agreement to Article 6, Page 6 of the Union Exhibit No. 1, and that Paragraph numbered three of the supplement is intended to replace and to be a substitute for only the last paragraph of Article 6 pages six and seven of Union Exhibit No. 1?

Mr. Tillman: It is so agreed for the General Counsel.

Mr. Babcock: Yes.

Examiner Winkler: Mr. Stirling?

Mr. Stirling: Agreed.

Examiner Winkler: Respondent's Exhibit No. 2 will be [723] admitted in evidence.

(Whereupon, the document above referred to, marked Respondent's Exhibit No. 2 for identification, was received in evidence.)

RESPONDENT'S EXHIBIT NO. 2

Memorandum Agreement of Strike Settlement Between

Dant & Russell, Ltd., hereinafter called the company and the International Woodworkers of America, Local Union 6-7, affiliated with the CIO, hereinafter called the Union.

1. It is agreed that the Company will pay the five men, namely, Russell Ward, James Parker, Roy Mohler, Lloyd Hanner, and Sid Taylor, their unpaid vacation claim for the year 1948.

2. It is agreed that the following seniority clause

Respondent's Exhibit No. 2—(Continued)

shall take the place of the seniority clause in the present contract:

Seniority

Plant seniority shall prevail when vacancies, promotions, lay-offs, or rehiring occurs. In the event of curtailment, employees shall be laid off in the inverse order in which they were hired, and when reemployment occurs, those employees laid off last shall be placed first.

Promotions shall be made on the basis of seniority and capability. As a general rule and practice, when two or more employees are contesting for one job, the senior employee shall not be denied the promotion if he has reasonable qualifications for a trial at the position.

If an employee is temporarily shifted to any position paying a smaller wage than he has been receiving, no reduction in wage shall be made.

3. A grievance committee and a Commissioner of the U. S. Conciliation Service shall meet within five days of the presentation of any grievance and there shall be no strike or lockout pending a meeting of this committee; the grievance committee being the same as set up in the contract except that the representative of the Conciliation Service shall sit in as Chairman.

In conclusion, it is agreed that the plant will be opened immediately and the returning employees

Respondent's Exhibit No. 2—(Continued)

hired back before new employees are employed, as set forth in the contract.

INTERNATIONAL WOODWORKERS OF AMERICA LOCAL UNION, No. 6-7

By .....

DANT & RUSSELL, Ltd.

By .....

* * * * *

Cross Examination

Q. (By Mr. Babcock): Mr. Clark, Commissioner Walker didn't make any decision on the merits of this dispute, did he? Did he one way or the other enter any formal decision that the union was right, or the company was right, or the men should be reinstated, or should not be reinstated?

A. No, or we wouldn't be here today, I don't believe. [724]

* * * * *

Q. Were you in the Vancouver office Thursday?

A. Yes, I was, Thursday afternoon.

Q. Did you talk to Mr. Parker or someone at the plant Thursday?

A. No. I wasn't able to get through on the phone that afternoon; there was a delay.

Q. Was there a call from the plant to you that day; Thursday?

A. Yes, there was, and I tried to return the call, and there was delay, and I wasn't able to get through that afternoon.

* * * * *

(Testimony of Victor Clark.)

Redirect Examination

Q. (By Mr. Stirling): Did Commissioner Walker make any recommendation to the company that they reinstate these men? A. No, none.

Q. Did he make any recommendation that the company take any action respecting these men?

A. None. [725]

* * * * *

Examiner Winkler: I have one question in view of that.

Q. Do you know whether or not the commissioner made any recommendation of any sort that the men should or should not be rehired, and, do you know whether he made recommendations to the union?

Mr. Tillman: Same objection.

A. It would be hearsay on my part. I can give you what we heard.

Examiner Winkler: Did you hear him make any recommendations?

A. No, not one way or the other on that. You are talking about Commissioner Walker making recommendations in my presence or within my hearing?

Examiner Winkler: That is right.

A. That is right.

Q. (By Mr. Stirling): Did you hear him make any recommendations in connection with the company?

Mr. Tillman: It has been answered. [726]

Examiner Winkler: Have you answered that?

A. None on our part.

(Testimony of Victor Clark.)

Q. (By Mr. Stirling): Did you hear him make any recommendations on the unions' part?

A. None. We were out of the office when he was discussing it with them.

* * * * *

FLOYD PARKER

a witness previously called, was recalled by the Respondent, and, having been previously duly sworn, was examined and testified further as follows:

Q. (By Mr. Stirling): Will you tell us exactly what happened during the three days, July 13, 14, and 15, with respect to Max Gassner and Hank Christopherson?

A. Well, they drove up in front of the office, and——

Examiner Winkler: When? Please identify the times when you speak.

A. Well, approximately seven o'clock or shortly therebefore.

Q. This is on Thursday. A. On Wednesday.

Examiner Winkler: On Wednesday, the first of the three days? [727]

A. Thirteenth, yes. They wanted to know if there was any work to do, and I said I had some dry loading out there they could do, and I told them where it was, and they went on out to it. And, I started on my round of the yard, the first round, and they hadn't started working, so I went out and asked them if there was anything they needed, and they said they didn't have the lumber apron.

Examiner Winkler: When was this?

A. That was shortly after seven.

(Testimony of Floyd Parker.)

Examiner Winkler: Shortly after the men went to the piles you went out, is that correct?

A. Yes, sir.

Examiner Winkler: I mean I'd like not only the day, but also the time, as close as possible, when all these events took place.

A. Five or ten minutes.

Examiner Winkler: Five or ten minutes after they went to work?

A. Yes. So, they wanted to know if I had one, so I said I'd go look for one, and I went over to Chain, and they had a full crew on there. And, we had an old chain, and we had some men working on there, and they had used all the aprons up. They were all in use.

I went out and told them I didn't have an apron for them that day, and——[728]

Q. (By Mr. Stirling): Do you recall when you went back; about what time, or how long after you had first talked to them it was before you went back?

A. Possibly another ten minutes.

And, then I instructed them on separating the ten and twelve inch into one load, and the rest of it into another load.

Examiner Winkler: You gave them this instruction after you returned and told them you couldn't find an apron?

A. I couldn't swear to whether I give them the instructions at that time, or the first time I was out; one or the other times. And, I went on someplace else, and——

(Testimony of Floyd Parker.)

Q. (By Mr. Stirling): Were you making a tour of the yard?

A. Oh, yes, I was going around and seeing that the lift trucks were getting the lumber to the chain, and what lumber to get to the chain.

Q. Now then, did you come back by their working place?

A. I didn't go right to the working spot, no.

Q. Were you within seeing distance of it?

A. Yes; I was at the end of the dry chain.

Q. When did you do this the next time?

A. Well, that was possibly ten or fifteen minutes later.

Q. Ten or fifteen minutes later after you had been there to tell them there was no apron?

A. After I told them there was no apron.

Q. And, were they working at that time? [729]

A. No.

Q. Had they told you they would get along without an apron?

A. Well, I don't know whether they told me they'd get along without one. It would be obvious that if they would work they would have to get along without one, because there wasn't one available; I couldn't find one.

Q. Is it necessary for both men on dry loading to have aprons?

A. Well, it is not necessary for the top man to have one.

Q. And then, that would make it about 7:25 that you saw them that time? A. Yes, sir.

(Testimony of Floyd Parker.)

Q. And, they hadn't started to work yet as I understand it from your testimony? A. No.

Q. Did you go over, then, at that time?

A. No, I went on into the office then. I usually went into the office after I made a round or two of the yard there, and seeing things were lined up.

Q. Did you make other rounds of the yard during that morning?

A. Yes, I went around several times.

Q. Did you observe them at that job?

A. Yes, sir.

Q. And, did you observe whether they were working or not?

A. Well, they were working after, when I saw them the next time after having gone into the office. [730]

Q. Did you have them do any other type of work that morning?

A. Yes, there was a little green lumber there, and I had them pile that.

Q. You had them pile that?

A. In conjunction with another crew.

Q. And then, did you go out past the dry loading place from time to time during the day, past the place where they were dry loading, or near it?

A. Yes. I wouldn't venture a guess as to how many times, but it was different times throughout the day, all through the day.

Q. And, did you observe them?

A. Yes, sir.

Q. And, did you observe them working, or what

(Testimony of Floyd Parker.)

were they doing? A. Well, they were——

Q. This is on the first day.

A. They were moving. They were working fairly steady.

Q. Was there anything peculiar about their work that particular day, the rest of that particular day?

A. They weren't putting out too much effort although they did work fairly steady.

Q. Then on Thursday, July 14th, what did you observe about their work that day?

A. Well, they went out to the piles of lumber again, and they didn't start working again. [731]

Q. When they got out there you mean?

A. Yes, sir.

Q. How soon after they got out there did they start work?

A. Well, it was approximately a half hour again.

Q. How would you be able to judge that?

A. Well, I went out and asked them if they needed any carrier blocks or anything in the way of equipment to work with, and they said no.

Q. Why did you go out and ask them that?

A. Well, because they hadn't worked, they weren't working, I thought they were possibly waiting for carrier blocks.

Q. And, did you make the rounds of the yard during that day? A. Yes, sir.

Q. And, did you observe them from time to time during that day? A. Yes, sir.

Q. On the morning of Thursday, the 14th, did you

(Testimony of Floyd Parker.)

have them do any other work besides their dry loading?

A. Yes; they piled a little more green lumber.

Q. And, was that work at the same location that they had done before? I mean, done the day before, the green piling they had done the day before?

A. Yes; there was one location for green piling.

Q. Did you instruct them to do the green piling? [732]

A. Oh, I don't recall. I could have sent a carrier out after them, or someone, to tell them that there was some green to be piled.

Q. To tell them? A. Yes, sir.

Q. Did you observe them while they were doing the green piling?

A. Well, I observed approximately what time they left, and what time they got through.

Q. And, about what time did they leave their dry loading to do the green piling?

A. It was approximately ten o'clock.

Q. And, when, about what time, did they finish their green piling?

A. About eleven; might have been a few minutes after eleven.

Q. How did they get from their dry loading job to their green piling job?

A. They drove their car down.

Q. Drove their car? A. Yes, sir.

Q. And then, did they get back the same way?

A. Yes, sir.

(Testimony of Floyd Parker.)

Q. And, after they got back to the dry loading job location, did you notice anything peculiar about their activities then?

A. Well, they didn't get out of the car.

Q. Did you notice how long they stayed in the car? [733]

A. Well, from that time until lunch time, two or three different times, I went back and looked, and they were always in their car when I went back and looked.

Examiner Winkler: You say they were in the car from eleven until twelve?

A. Approximately, yes.

Q. (By Mr. Stirling): Did you go up to them?

A. No, I went by in my pickup.

Q. And, saw them sitting in the car?

A. Yes, sir.

Q. Did they continue to dry load in the afternoon? A. Yes, sir.

Q. And, did you observe them working during the afternoon? A. Yes, sir.

Q. Was there anything unusual about the way they were working in the afternoon?

A. Well, they weren't putting out with any effort.

Q. The afternoon of the 14th? A. Yes.

Q. On Friday, July 15th, did they come to work at the usual time? A. Yes, sir.

Q. And go to the dry loading job?

A. Yes, sir.

(Testimony of Floyd Parker.)

Q. Did you notice anything peculiar about their work at that [734] time of the morning?

A. Well, they didn't start to work again.

Q. How do you know that?

A. Well, I was observing them.

Q. Did you drive around the yard and observe them from your car, or were you walking?

A. I was in the pickup.

Q. And, do you know about when they started to work that morning?

A. Well, it was—last time I looked they hadn't started working. I went on into the office and looked at the time clock as I went in. It was 7:35.

Q. And, did you go out to them?

A. No, I don't believe I did.

Q. And, during the rest of that day, did you notice anything unusual about the way they were working?

A. There was no effort b ng put out.

Q. What do you mean by, "no effort being put out"?

A. Well, they were obviously not—I don't know, just no effort being put out.

Q. You mean they weren't exerting themselves?

A. That is right.

Q. Now, these three piles that they worked on—at least; it has been testified that there were three piles, and, as I take it the inventory shows that there were three piles. Could [735] I see that exhibit? You heard Mr. Bloom testify this morning that this was an inventory of the three piles on

(Testimony of Floyd Parker.)

which Max Gassner and Hank Christopherson worked? A. Yes, sir.

Q. Do you know how those piles were located in the yard? A. Yes, sir.

Q. Well, how were they located?

A. Well, there were three of them on the last row of foundations in that section of the yard.

Q. Now, the footage on the exhibit shows that there were a different number of feet in each pile. Were the piles different sizes? A. Yes, sir.

Q. What was the general picture of the three piles; were there two larger piles and one smaller pile, or—— A. Yes.

Q. And, at the time that Hank Christopherson and Max Gassner started to work on those piles, a part of them had been torn down, had they not?

A. Yes, sir; that is right.

Q. And, do you know which of the piles had been partially torn down? A. Yes, sir.

Q. Which of the piles had been partially torn down?

A. Well, the farthest one to the north. [736]

Q. And, was it one of the larger piles?

A. Yes, sir.

Q. Then, it would have been the pile containing either 19,850 feet or the pile containing 20,730 feet?

A. That is right.

Q. Now, you heard the testimony of Otto Bauer that he and his partner tore down at least a third of one of those piles? A. Yes, sir.

Q. And, that would mean that they tore down

(Testimony of Floyd Parker.)

at least a third of one of those larger piles?

A. Yes, sir.

Q. Or, at least 6,000 board feet. Did you also hear the testimony of Otto Bauer that he and his partner worked about an hour and a half?

A. Yes, sir.

Q. Did Otto Bauer and his partner work only once in tearing down those piles?

A. Yes, sir.

Q. And, was it just that hour and a half period that he stated in his testimony? A. Yes, sir.

Q. And, Otto Bauer and his partner tore down at least 6,000 board feet in an hour and a half, leaving about 50,000 feet, at the maximum, to be torn down by Gassner and Christopherson?

A. Yes, sir. [737]

Q. Do you know how many hours Gassner and Christopherson spent on those 50,000 board feet?

A. Twenty and a quarter.

Q. How do you account for them taking twenty and a quarter hours to tear down 50,000 board feet when Otto Bauer and his partner tore down 6,000 board feet in an hour and a half?

Mr. Babcock: I object to that as argumentative and assuming facts not in evidence.

Examiner Winkler: Sustained.

* * * * *

Mr. Stirling: Otto Bauer testified that he and his partner tore down a third of one of the piles. Mr. Parker has testified that Otto Bauer worked on one of the larger piles.

(Testimony of Floyd Parker.)

Examiner Winkler: I have the facts; I know all the facts. The facts are that there were about 56,000 board feet in the three loads. The testimony of Bauer, as you stated, is that he and his partner tore down 6,000 feet, leaving 50,000 feet to be torn down by the others, the dischargees in this case, in the three day period, and, I presume, as a matter of argument your position will be that these two people were obviously [738] loafing because it took them twenty and a quarter hours to do 50,000 feet, whereas the other team did it in one and a half, is that your point? [739]

* * * * *

Q. (By Mr. Stirling): You heard the witnesses state that that lumber had been piled in the yard for two years, I believe it was; do these dates indicate anything different than that?

A. They indicated they were piled in 1948.

Q. Do you recall the type of lumber that was in those piles? A. Yes.

Q. What was the character of it?

A. Well, it was mis-manufactured lumber, something that happened at the head rig at the mill.

Q. Was it all that?

A. Well, not entirely, no. It was a combination of boards that had been maybe cut through with the trim saw or partially cut into. It made they degraded, and not of uniform or top-graded lumber.

* * * * * [740]

Q. Now, Mr. Parker, Mr. Clark has testified

(Testimony of Floyd Parker.)

that you had authority to fire these men. Why didn't you do it?

A. Well, I wasn't exactly sure whether I did have or not.

Q. And, why didn't you call him, or did you?

A. Well, we had a call in for him Thursday, and he wasn't in the office when we got the call through, or I was going to discuss the matter with him. And, I never did ever get ahold of him that day, and I didn't get ahold of him until late evening, that is, late afternoon of Friday.

Q. Well, why didn't you call him on Friday?

A. Oh, I don't recall just exactly why. Well, he usually called into the office himself, and I was going to wait until he got there, or called into the office before I talked to him about it. I didn't figure there was any need of putting [742] a call in for him especial for that. [743]

* * * * *

Cross Examination

Q. In the early stages of this case did you submit a statement to the Board?

A. I don't know as I did. I made a statement and gave it to our lawyer; I don't know where it got to.

Q. Do you recall in the statement that you submitted a statement to the effect that the men were—

Mr. Stirling: I——

Examiner Winkler: May we have the question first?

Q. ——the statement to the effect that the men

(Testimony of Floyd Parker.)

were discharged solely for loafing on the job in open defiiance as to what constitutes a common day's work at an average mille? [748]

Mr. Stirling: I object to the question, because Mr. Tillman has not definitely procured the evidence that a statement was submitted by Mr. Parker.

Examiner Winkler: I will permit the question. This is cross examination. Continue.

The Witness: What was the question again now?

Examiner Winkler: Will the reporter please read the question back?

Mr. Stirling: He doesn't know what statement he is talking about, how can he answer it?

Mr. Babcock: He can say so if he doesn't.

Mr. Stirling: Well, let him say so, not you.

Examiner Winkler: Mr. Reporter, please read the question back to the witness.

(Whereupon the reporter did as directed.)

The Witness: I don't recall those exact words, no.

Q. (By Mr. Tillman): Is that the substance of the statement you made?

A. Well, I might—my contention was that on their discharge they were discharged because they were loafing.

Q. Well, what do you mean if you use the statement, "open defiance"? What constitutes a common day's work? A. I don't——

Examiner Winkler: Has the witness testified he made that statement? [749]

(Testimony of Floyd Parker.)

A. I don't know whether I made that statement. That sounds a little too high toned for me.

Examiner Winkler: If the witness testifies that he didn't make the statement, then he can't testify as to what he meant when he made it.

Mr. Tillman: I will ask that this document which purports to be a statement signed by Floyd L. Parker be marked as General Counsel's Exhibit 2 for identification.

(Whereupon the document referred to was marked as General Counsel's Exhibit 2 for identification.)

Q. (By Mr. Tillman): Now, showing you General Counsel's Exhibit 2 for identification, would you examine that and state whether or not that is your signature?

A. Yes, that is my signature.

Q. Is that the statement that you prepared?

A. In substance it is, yes.

Q. Well, it is a statement in the same condition as when you prepared it, or signed it rather?

A. Yes, I think so.

Q. Did you yourself prepare it, or did I understand you to say that someone else drafted it for you?

A. One of the office help——

Q. One of the office help——

A. ——wrote it.

Examiner Winkler: Which office help Mr. Parker? [750]

A. It was, I believe, Mrs. Bottemiller.

(Testimony of Floyd Parker.)

Examiner Winkler: Is Mrs. Bottemiller an employee of the Labor Board, or an employee of the Company?

A. Employee of the company.

Q. (By Mr. Tillman); Was there any representative of the Labor Board there when you prepared it? A. No.

Q. At the time you prepared it, were the statements true and correct?

A. Well, I afterwards said there was some points in it that should have been clarified; that the meaning as they appeared to me they imputed a different meaning than I had intended.

Q. Well, do you mean that someone put words in your mouth at that time?

A. Well, no, there was no words put in my mouth. Mrs. Bottemiller was trying to put it in a little better English than I stated it, and I think it came out with a little different meaning than I had intended.

Q. I don't know that you read the whole statement, but I'd like to direct your attention to that last paragraph.

Mr. Stirling: Well, I take it that the statement goes in whether I have any objection to it going in or not, the way the proceedings have gone.

Mr. Tillman: I haven't offered it yet.

The Witness: Well, those aren't—— [751]

Mr. Stirling: Well, if he hasn't offered it, I don't see——

(Testimony of Floyd Parker.)

Examiner Winkler: It is proper cross examination.

Mr. Tillman: I am attempting to refresh the witness' recollection at the moment.

The Witness: This last paragraph, that wasn't my exact words, no.

Examiner Winkler: You are referring to the last paragraph of General Counsel's Exhibit 2 for identification?

The Witness: Of this here, (indicating), yes.

Examiner Winkler: Which paragraph do you mean?

The Witness: This one here, (indicating).

Examiner Winkler: The paragraph starting, "These men", and ends, "on this statement"?

The Witness: Yes.

Q. (By Mr. Tillman): Does that mean, then, that there wasn't any so-called open defiance?

A. No, not in those three days instances.

Q. Do you have any other instances in mind when you wrote the statement? A. Pardon?

Q. Did you have any other instances in mind when you wrote the statement?

A. Well, as I say——

Mr. Stirling: I object to that question. What does the [752] counsel mean by, "instances"?

Mr. Tillman: I am using the word that the witness did.

The Witness: I didn't——

Mr. Stirling: He was answering your question, your first question. Now, this question is——

(Testimony of Floyd Parker.)

Examiner Winkler: What is the question before us?

(Whereupon the reporter read the last question.)

Examiner Winkler: Would you answer the question, please; the objection is overruled?

The Witness: What was the question again?

(Whereupon the reported repeated the reading of the last question.)

A: No. As I say, I think that was probably a little dressing up of my language on the part of Mrs. Bottemiller. As I say, I don't recall that I used the words, "open defiance".

Q. (By Mr. Tillman): Is what you meant to say, then, that they were fired because they weren't doing a common day's work?

A. That they were loafing and not doing——

Q. A common day's work?

A. ——a common day's work.

Mr. Tillman: I will offer the statement in evidence.

Mr. Stirling: No objection.

Examiner Winkler: General Counsel's Exhibit 2 for identification will be received in evidence.

(Whereupon the document previously marked as General Counsel's Exhibit 2 for identification was received in evidence.) [753]

GENERAL COUNSEL'S EXHIBIT No. 2

Redmond, Oregon, August 16, 1949

I, Floyd Parker, Superintendent of the lumber yard of Dant & Russell, Ltd., Redmond, Oregon, on July 13th assigned one Max Gassner and H. J. Christopherson to the job of tearing down approximately 50,000 feet of rough dry lumber.

These men were regularly employed by the company as contract green lumber pilers, who are paid at the rate of 97c per thousand board feet for lumber piled, and under this contract arrangement these men will pile approximately 20,000 to 23,000 board feet per day.

Due to the lack of green lumber coming in to the yard on the dates in question, namely July 13, 14, and 15th, these two men asked me, if there was any day labor job, and I assigned them to the job of piling the dry lumber, the day labor rate for which is $1.50 per hour. After these men were assigned to the job, they went in to the yard and immediately started loafing on the job.

On July 13th, they inquired for a lumber apron, which I tried to get for them, and being unable to find one, went back and told them we didn't have one for them for that day, and they did no work whatsoever for 30 minutes afterwards. On the morning of the 14th, these fellows went out to the job and again it was 7:30 A.M., or 30 minutes after starting time, before they did any work, and I inquired if there was anything they needed to do their job and they said "No." On the 14th, after having been on

General Counsel's Exhibit No. 2—(Continued)

another job for approximately one hour, these men went back to their dry loading job and sat in their car from 11:00 to 12:00 A.M.

On the third morning, the 15th, these men again went out to the yard and didn't commence work until 7:35 A.M.

These men so obviously were loafing on the job, that two members of the Union Shop Committee stated that if anyone else were to do that they would be discharged immediately; and my reply to this statement was that this defiance of work was not going unnoticed, and would be taken care of when Mr. Clark, the Manager, returned from Portland, as he is the only man in the plant who has the power to sign the checks.

In addition to the outright loafing, when they were working, it took them approximately 40½ working hours to tear down 50,000 feet of dry lumber. Just an average workman, handling lumber on the same hourly rate, would have torn down nearly twice as much lumber as these men did. Two other green pilers, when put on this job, tore down approximately 8,000 feet board measure in 3 working hours.

At no time has there ever been any grudge held against these men, when they were doing their job, that is, doing an average day's work for an average day's pay; and to my knowledge there has never once been any statement made by any of the Foremen or Management, in reference to any union activities of these men; and when Mr. Sullivan

General Counsel's Exhibit No. 2—(Continued)

brought it to our attention that he was applying to the National Labor Relations Board for a hearing, due to discrimination, this was the first that I, or the Management knew anything about it.

These men were discharged solely for loafing on the job and open defiance as to what constitutes a common day's work in the average mill; and for that reason I recommended their discharge and stand on this statement.

/s/ FLOYD L. PARKER,
Yard Superintendent.

Q. (By Mr. Tillman): On July 15th, did Max Gassner and Henry Christopherson do any piling?

A. Yes, sir.

Q. On that occasion did they work with the spare crew?

A. I couldn't swear to the third day whether they did or not. The first two days they did, but not—I am not positive on the third day. I believe they did, however.

Q. Was there any particular reason for putting the spare crew on the first day with the regular crew, or, with a regular crew?

A. Well, I don't recall offhand as there was any particular reason.

Q. Any reason the second day?

A. No. There was two piling crews there, and I figured they might just as well get the lumber piled up and out of the way as fast as possible.

(Testimony of Floyd Parker)

Q. Was there any emergency that required two crews?

A. There wasn't any real emergency that required one, even.

Mr. Tillman: No other questions.

Examiner Winkler: Mr. Babcock?

Q. (By Mr. Babcock): Mr. Parker, was there any lower grade of lumber received at the yard than number five?

A. Well, not a classified grade.

Q. Yes. Now, this lumber in these three piles was not only random width and length, but some of it was also random thickness [754] wasn't it?

A. There was wedge lumber.

Q. Perhaps that wasn't the proper way to state it. I mean, some of the boards were wedge shaped, they hadn't been cut through, is that correct?

A. I don't understand that quite, either.

Q. Some of the boards were wedge shaped, they weren't cut through were they?

A. Yes. I just stated there was some wedge shaped.

Q. Was that true of a very large portion of those, if you know?

A. Well, I don't—I wouldn't venture a guess as to the percentage of wedge in it, no.

Q. Of course, you didn't individually handle the lumber, did you; that is, board by board at any stage? A. That particular lumber?

Q. Yes. A. No. [755]

* * * * *

(Testimony of Floyd Parker.)

Examiner Winkler: I have one question.

Q. How are these men paid during these three days? The thing I have in mind is this: They were working a few hours at green piling, and they were also doing some day work. When did their pay begin as day workers?

A. They were paid by the hour when they were on the dry loading, and then they were paid by piece when they were piling.

Q. Well, do they have to check in at the office, for example, when they finish their piling?

A. No, I kept track of the time when they were piling and when they went back on the dry loading job.

Q. Well now, when they finished the piling about eleven o'clock one morning, as you testified, and they went back to the dry loading, did you know when their pay started running for dry loading purposes?

A. Well, at eleven o'clock I figured it, yes.

Q. At eleven? A. Yes.

Examiner Winkler: I wondered about that all through the hearing.

Anything further?

Mr. Stirling: I have nothing further. [757]

Mr. Tillman: Nothing further.

Mr. Babcock: No.

Examiner Winkler: The witness will be excused.

(Witness excused.) [758]

* * * * *

[Endorsed]: No. 12985. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Thomas W. Dant, Robert E. Dant (individually and as guardian for Diana Kerr and Daphne Kerr), John R. Dant, Eleanor C. Dant, Mary B. Dant, R. J. Darling, E. S. Goodell, Mrs. Mary Goodell, Glen W. Cheney and Dorothy D. McNary, co-partners doing business as Dant & Russell, Ltd., Respondents. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed June 20, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12985

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THOMAS W. DANT, ROBERT E. DANT (individually and as guardian for Diana Kerr and Daphne Kerr), John R. Dant, Eleanor C. Dant, Mary B. Dant, R. J. Darling, E. S. Goodell, Mrs. Mary Goodell Glen W. Cheney, and Dorothy D. McNary, co-partners d/b/a Dant & Russell, Ltd.,
Respondents.

STATEMENT OF POINTS ON WHICH PETITIONER INTENDS TO RELY

In this proceeding, the petitioner, National Labor Relations Board, will urge and rely upon the following points:

1. The Board properly found that the respondents violated Sections 8 (a) (1) and 8 (a) (3) of the National Labor Relations Act, as amended, (61 Stat. 136, 29 U.S.C. Supp. III, Secs. 141, et seq.), by discriminatorily discharging employees Max Gassner and Henry J. Christopherson.

2. The Board properly denied the respondents' motion to dismiss the complaint.

3. A decree should be entered enforcing the Board's order in full.

Washington, D. C.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations Board.

[Endorsed]: Filed June 20, 1951. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. III, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondents, Thomas W. Dant, Robert E. Dant (individually and as guardian for Diana Kerr and Daphne Kerr), John R. Dant, Eleanor C. Dant, Mary B. Dant, R. J. Darling, E. S. Goodell, Mrs. Mary Goodell, Glen W. Cheney, and Dorothy D. McNary,

co-partners d/b/a Dant & Russell, Ltd., their agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Thomas W. Dant, Robert E. Dant (individually and as guardian for Diana Kerr and Daphne Kerr), John R. Dant, Eleanor C. Dant, Mary B. Dant, R. J. Darling, E. S. Goodell, Mrs. Mary Goodell, Glen W. Cheney, and Dorothy D. McNary, co-partners doing business as Dant & Russell, Ltd. and International Woodworkers of America, Local 6-7, Case No. 36-CA-100."

In support of this petition the Board respectfully shows:

1. Respondents are a copartnership engaged in business in the State of Oregon, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

2. Upon all proceedings had in said matter before the Board as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on November 29, 1950, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondents, their agents, successors and assigns. The aforesaid order provides as follows:

Order

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board

hereby orders that the Respondents, Thomas W. Dant, Robert E. Dant (individually and as guardian for Diana Kerr and Daphne Kerr), John R. Dant, Eleanor C. Dant, Mary B. Dant, R. J. Darling, E. S. Goodell, Mrs. Mary Goodell, Glen W. Cheney, and Dorothy D. McNary, co-partners d/b/a Dant & Russell, Ltd., Redmond, Oregon, individually and as co-partners, and their agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Woodworkers of America, Local 6-7, or in any other labor organization of their employees, by discharging or refusing to reinstate any of their employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment;

(b) In any other manner, interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Woodworkers of America, Local 6-7, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a)(3) of the Act.

2. Take the following affirmative action, which the

Board finds will effectuate the policies of the Act:

(a) Offer to Max Gassner and Henry J. Christophersen immediate and full reinstatement to their former or a substantially equivalent position, without prejudice to their seniority or other rights and privileges;

(b) Make whole Max Gassner and Henry J. Christopherson in the manner set forth in the section entitled "The remedy" for any loss of pay they may have suffered by reason of the Respondents' discrimination against them;

(c) Upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Order;

(d) Post at their operations at Redmond, Oregon, copies of the notice attached hereto, marked Appendix A.[5] Copies of said notice to be furnished the Regional Director for the Nineteenth Region, after being signed by a representative of the Respondents, shall be posted by the Respondents, immediately upon receipt thereof, and maintained by them for sixty (60) consecutive days in conspicuous places, including all places where notices to employees are custom-

[5] In the event that this Order is enforced by a decree of a United State Court of Appeals, there shall be inserted in the notice before the word "A Decision and Order" the words, "A Decree of the United States Court of Appeals Enforcing."

arily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Nineteenth Region, in writing, within twenty (20) days from the date of this Order what steps the Respondents have taken to comply herewith.

3. On November 29, 1950, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondents' counsel.

4. Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of

the Board, and requiring Respondents and their agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 15th day of June, 1951.

NATIONAL LABOR RELATIONS BOARD,

By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

APPENDIX A

Notice to All Employees Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership in International Woodworkers of America Local 6-7, or any other labor organization of our employees, by discharging any of our employees, or in any other manner discriminating as to their hire and tenure of employment or any term or condition of employment.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Woodworkers of America, Local 6-7, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or

all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a)(3) of the Act.

We Will offer to Max Gassner and Henry J. Christopherson immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed; and we will make them whole for loss of pay suffered as the result of the discrimination against them.

All of our employees are free to become or remain members of the above-named union or any other labor organization.

DANT & RUSSELL, LTD.,
(Employer)

By .....
(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Endorsed]: Filed June 20, 1951. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America:

To: Thomas W. Dant, etc., et al., doing business as Dant & Russell, Ltd., Redmond, Oregon; International Woodworkers of America, CIO, Local 6-7, CIO Box 384, 933 Bond St., Bend, Oregon, and International Woodworkers of America, CIO, 418 Governor Bldg., Portland (4) Oregon,

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e), you and each of you are hereby notified that on the 20th day of June, 1951, a petition of the National Labor Relations Board for enforcement of its order entered on November 29, 1950, in a proceeding known upon the records of the said Board as "In the Matter of Thomas W. Dant, Robert E. Dant (individually and as guardian for Diana Kerr and Daphne Kerr), John R. Dant, Eleanor C. Dant, R. J. Darling, E. S. Goodell, Mrs. Mary Goodell, Glen W. Cheney and Dorothy D. McNary, co-partners, doing business as Dant & Russell, Ltd., and International Woodworkers of America, Local 6-7, Case No. 36-CA-100," and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Cir-

cuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 20th day of June in the year of our Lord one thousand, nine hundred and fifty-one.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

Returns on Service of Writ attached.

[Endorsed]: Filed July 2, 1951. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

ANSWER

Now comes the Respondents by their attorney, Raymond S. Smethurst, and answer the petition of the National Labor Relations Board as follows:

1. The Respondents admit they are a co-partnership engaged in business in the State of Oregon and that this Court has jurisdiction of the Board's petition as alleged in paragraph 1 of said petition; however, the Respondents deny they have committed any unfair labor practices as alleged in paragraph 1 of the petition.

2. The Respondents admit that the Board filed a decision and order on November 29, 1950, and that a copy thereof was served upon them as alleged in paragraphs 2 and 3 of said petition.

3. The Respondents allege that said decision and order of the Board are not in accordance with law and that the decision is not supported by evidence as required by the National Labor Relations Act, as amended (29 U.S.C., Supp. III, Secs. 151, et seq.), and the Administrative Procedure Act (5 U.S.C. Sec. 1001, et seq.).

Wherefore, the Respondents pray this Honorable Court that it deny the Board's petition for enforcement and vacate the decision and order which the petition seeks to have enforced.

Dated at Washington, D. C., this 20th day of July, 1951.

/s/ RAYMOND S. SMETHURST,
Counsel for Respondents.

Certificate of Service attached.

[Endorsed]: Filed July 23, 1951. Paul P. O'Brien, Clerk.

In the United States Court of Appeals for the Ninth Circuit

No. 12985

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

THOMAS W. DANT, ET AL., *Respondents*.

Petition to Enforce an Order of the National Labor Relations Board

PROCEEDINGS HAD IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Wednesday, February 27, 1952.

Before: MATHEWS and BONE, Circuit Judges.

Order of Submission

ORDERED petition to review argued by Mr. Norton J. Come, Attorney, National Labor Relations Board, counsel for petitioner, and by Mr. John T. Casey, counsel for respondent, and on oral stipulation of said counsel, submitted to Mathews, Stephens and Bone, Circuit Judges for consideration and decision.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Thursday, March 20, 1952.

Before: MATHEWS, STEPHENS and BONE, Circuit Judges.

Order Directing Filing of Opinion and Filing and Recording of Decree

ORDERED that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THOMAS W. DANT, ROBERT E. DANT (individually and as guardian for Diana Kerr and Daphne Kerr), JOHN R. DANT, ELEANOR C. DANT, MARY B. DANT, R. J. DARLING, E. S. GOODELL, MRS. MARY GOODELL, GLEN W. CHENEY and DOROTHY D. McNARY, partners doing business as Dant & Russell, Limited,
Respondents.

PETITION TO ENFORCE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

Opinion

Before MATHEWS, STEPHENS and BONE, Circuit Judges.

MATHEWS, Circuit Judge.

The National Labor Relations Board has petitioned this court to enforce an order issued by the Board in a proceeding against respondents, Thomas W. Dant and others, partners doing business as Dant & Russell, Limited. Answering the petition, respondents pray that it be denied and that the order be vacated.

The proceeding was initiated by International Woodworkers of America, Local 6-7, a labor organization hereafter called the union, which was at all pertinent times an affiliate of the Congress of Industrial Organizations, a national labor organization hereafter called the C.I.O. The union initiated the proceeding on August 3, 1949, by making and filing with the Board a charge under subsection (b) of § 10 of the National Labor Relations Act, as amended, 29 U.S.C.A. § 160, thereby charging that respondents had engaged and were engaging in unfair labor practices listed in § 8 of the Act, as amended, 29 U.S.C.A. § 158. On March 28, 1950, the Board issued a complaint pursuant to the charge. On that complaint, after notice and hearing, the Board issued the order here sought to be enforced.

Subsection (h) of § 9 of the Act, 29 U.S.C.A. § 159, provides that "no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10 of this Act [29 U.S.C.A. § 160] unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods." For brevity's sake, such affidavits are hereafter called non-Communist affidavits.

As indicated above, the complaint in this proceeding was issued on March 28, 1950, pursuant to a charge made by a labor organization (the union) under subsection (b) on August 3, 1949. There were on file with the Board on August 3, 1949, non-Communist affidavits executed by the officers of the union. However, there were not on file with the Board on August 3, 1949, non-Communist affidavits executed by the officers of the national labor organization (the C.I.O.) of which the union was an affiliate. Therefore the Board was not empowered to entertain the charge or to issue the complaint or the order. See subsection (h), supra; N.L.R.B. v. Highland Park Mfg. Co., 341 U.S. 322; N.L.R.B. v. Postex Cotton Mills, 5 Cir., 181 F. 2d 919; N.L.R.B. v. J. I. Case Co., 8 Cir., 189 F. 2d 599; N.L.R.B. v. Clark Shoe Co., 1 Cir., 189 F. 2d 731.

Non-Communist affidavits executed by the officers of the C.I.O. were filed with the Board in December, 1949—long after the charge was made—and were on file with the Board when the complaint was issued. However, they had no retroactive effect and hence did not validate the charge or empower the Board to entertain it or to

issue the complaint or the order. See N.L.R.B. v. Highland Park Mfg. Co., supra; N.L.R.B. v. J. I. Case Co., supra; N.L.R.B. v. Clark Shoe Co., supra.

Petition denied and order set aside.

(Endorsed:) Opinion. Filed March 20, 1952. Paul P. O'Brien, Clerk.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THOMAS W. DANT, ROBERT E. DANT (individually and as guardian for Diana Kerr and Daphne Kerr), JOHN R. DANT, ELEANOR C. DANT, MARY B. DANT, R. J. DARLING, E. S. GOODELL, MRS. MARY GOODELL, GLEN W. CHENEY and DOROTHY D. McNARY, partners doing business as Dant & Russell, Limited,
Respondents.

No. 12985

Decree

The National Labor Relations Board having on November 29, 1950, issued an order against respondents, Thomas W. Dant, Robert E. Dant (individually and as guardian for Diana Kerr and Daphne Kerr), John R. Dant, Eleanor C. Dant, Mary B. Dant, R. J. Darling, E. S. Goodell, Mrs. Mary Goodell, Glen W. Cheney and Dorothy D. McNary, copartners, doing business as Dant & Russell, Ltd., and the Board having petitioned this Court on June 20, 1951, for the enforcement of the said order, and the said respondents having filed on July 23, 1951, their answer to said petition, and this cause having been submitted to this Court on said petition and answer, and the transcript of record in the cause, briefs filed, and oral arguments made by counsel for respective parties, Now, therefore,

IT IS ORDERED, ADJUDGED AND DECREED by this Court that the said petition of the National Labor Relations Board to enforce its order of November 29, 1950, in this cause be, and hereby is denied, and said order be, and hereby is set aside.

(Endorsed) Decree.
Filed March 20, 1952.
Paul P. O'Brien, Clerk.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Title of Cause and Number)
NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
THOMAS W. DANT, ET AL.,
Respondents.
No. 12984

Certificate of Clerk. U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing (592) pages, numbered from and including 1 to and including 592, to be a full, true and correct copy of the entire record of the above-entitled case in the said Court of Appeals, made pursuant to request of counsel for the petitioner, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 16th day of May, 1952.

/s/ PAUL P. O'BRIEN,
PAUL P. O'BRIEN,
Clerk.

SEAL

☆ U.S. GOVERNMENT PRINTING OFFICE 1952—207837/P.O.1228

Supreme Court of the United States

No. 97, October Term, 1952

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THOMAS W. DANT ET AL., COPARTNERS, DOING BUSINESS AS DANT & RUSSELL, LTD.

Order allowing certiorari

Filed October 13, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office - Supreme Court, U. S.
FILED
JUN 2 1952
CHARLES ELMORE CROPLEY

No. 97

In the Supreme Court of the United States

OCTOBER TERM, 1951

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

THOMAS W. DANT, ET AL., CO-PARTNERS, doing business as DANT & RUSSELL, LTD.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. ——

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

THOMAS W. DANT, ET AL., CO-PARTNERS, doing business as DANT & RUSSELL, LTD.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decision of the Court of Appeals for the Ninth Circuit entered on March 20, 1952 (R. 590-591), setting aside an order issued by the Board against Thomas W. Dant, *et al.*, d/b/a Dant & Russell, Ltd., hereafter called "the Company" (R. 52-54).

OPINIONS BELOW

The opinion of the Court of Appeals, not yet officially reported, is set forth at R. 588-590. The findings of fact, conclusions of law, and order of the Board (R. 6-38, 50-56, 59-60) are reported at 92 NLRB 307, and 95 NLRB No. 44.

JURISDICTION

The decree of the Court of Appeals (R. 590-591) was entered on March 20, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254, and Section 10(e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

An unfair labor practice charge was filed by a union at a time when the officers of this union had submitted the non-Communist affidavits prescribed by Section 9 (h) of the National Labor Relations Act, as amended, but the officers of the Congress of Industrial Organizations, with which the charging union was affiliated, had not. The officers of the C.I.O. submitted their affidavits, however, before the Board issued its complaint based upon the union's charge. The question presented is whether the Board may properly issue an unfair labor practice complaint at a time when the charging union is in full compliance with Section 9 (h), notwithstanding that there was not such full compliance when the charge was filed.

STATUTE INVOLVED

The statutory provision principally involved is Section 9 (h) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*). This provision and other relevant portions of that Act are set out in the Appendix, *infra*, pp. 13-16.

STATEMENT

On July 18, 1949, the Company discharged two employees, Max Cassner and Henry J. Christopherson (R. 21; 71, 183, 432). On August 3, 1949, International Woodworkers of America, Local 6-7, the bargaining representative of the Company's employees, filed a charge with the Board, alleging that the discharges violated Sections 8 (a) (3) and (1) of the Act (R. 6-7, 59). There were on file with the Board at that time non-Communist affidavits executed by officers of the union, as required by Section 9 (h) of the Act. Affidavits executed by the officers of the C. I. O. were not filed with the Board until December 22, 1949 (see note 3, *infra*, pp. 4-5).

On or about March 27, 1950, the General Counsel on behalf of the Board issued a complaint based on the charge filed by the union (R. 1-4, 7, 59). The customary proceedings were then held before a Trial Examiner and before the Board. On November 29, 1950, the Board issued its decision and order finding that the discharges were violative of the Act as alleged in the complaint, and directing the Company to take appropriate remedial action. (R. 6-38, 50-56.)

On June 6, 1951, after this Court had decided in the *Highland Park* case[1] that Section 9 (h) required the filing of affidavits by officers of parent federations like the C. I. O., the Company requested the Board to reconsider its order. In that request the Company urged, *inter alia*, that the Board "lacked jurisdiction to proceed with the case" because Section 9 (h) had not been fully complied with. (R. 57-59.)

On July 17, 1951, the Board denied the Company's request for reconsideration (R. 50-60). Respecting the Section 9 (h) contention, the Board held that the Section "requires compliance at the time of the issuance of the complaint, rather than at the time of the filing of the charge" (R. 60, n. 3).[2] The Board found that on this interpretation the requirement of Section 9 (h) had been fully met: "We have administratively determined that the charging union, as well as its parent federation, the Congress of Industrial Organizations, were in full compliance with the filing requirements of Section 9 (f), (g) and (h) of the Act substantially in advance of the issuance of the complaint in this proceeding" (R. 59-60).[3]

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[1] *National Labor Relations Board* v. *Highland Park Manufacturing Company*, 341 U. S. 322 (May 14, 1951).

[2] In support of this holding the Board cited its previous rulings in *Southern Fruit Distributors*, 80 N.L.R.B. 1283, and *H & H Manufacturing Co. Inc.*, 87 N.L.R.B. 1373.

[3] As this Court observed in the *Highland Park* case, the officers of the C.I.O. filed the affidavits prescribed by Section

The Board then petitioned the court below for enforcement of its order of November, 1950 (R. 576-582). The court, without discussing the merits of the unfair labor practice findings, set aside the Board's order on the ground that, under Section 9 (h), "the Board was not empowered to entertain the charge or to issue the complaint or the order" (R. 589). Relying, *inter alia*, on this Court's decision in *Highland Park*, 341 U. S. 322, the court below construed Section 9 (h) as prohibiting the issuance of any complaint unless the charging labor organization was in full compliance at the time its charge was filed. Since the officers of the C. I. O. were not yet in compliance at the time the charge in this case was filed, it followed, in the court's view, that Section 9 (h) barred issuance of the General Counsel's complaint after they came into compliance. (R. 589-590.)

REASONS FOR GRANTING THE WRIT

1. In holding that the disqualification of Section 9 (h) applies as of the time an unfair labor practice charge is filed, rather than as of the time that the General Counsel issues a complaint, the court below, we submit, has misconstrued the plain lan-

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9 (h) on December 22, 1949, about three months before the complaint herein was issued. According to the Board's administrative records and the opinion of the court below (R. 589) International Woodworkers of America, Local 6-7, was in compliance with Section 9 (h) both at the time the charge was filed and when the complaint issued.

guage of Section 9 (h). Section 9 (h) provides that "no complaint shall be issued pursuant to a charge * * * unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period * * * ." The "unless" clause clearly modifies the limitation "no *complaint* shall be issued." This has been the consistent administrative interpretation adopted by the Board. (See cases cited in note 2, *infra*, p. 4). The court below, however, reads the "unless" clause as though it modified only the descriptive phrase "pursuant to a charge." That interpretation in effect transforms the language "no complaint shall be issued" to read "no charge shall be entertained." Grammatically unjustified, that transformation does violence to the manifest intention of Congress, for Congress demonstrated in this very Section that when it desired to limit the power of the Board *"to entertain"* a proceeding instituted by a non-complying labor organization, it knew precisely how to say so.

With respect to representation proceedings which are initiated by petitions filed with the Board pursuant to Section 9 (c), Section 9 (h) provides that "no investigation shall be made * * * of any question * * * concerning the representation of employees." Congress thus did not preclude the Board from "entertaining" representation petitions filed by non-complying unions, but it did preclude the Board from conducting any investigation of such a petition unless and until the pe-

titioning union came into compliance. In sharp contrast, with respect to union shop election proceedings,[4] which are also initiated by petitions filed with the Board, Section 9 (h) provides that "no petition under section 9 (e) (1) shall be entertained." Congress thereby enjoined the Board not even to entertain union shop election petitions filed by non-complying unions. The language of the third clause, "no complaint shall be issued," which Congress applied to unfair labor practice cases, is not the equivalent of either of the preceding two limitations. Read in the light of the statutory unfair labor practice procedure which had been in effect for twelve years prior to the 1947 amendment, the limitation in unfair labor practice cases was manifestly intended to permit the Board to receive unfair labor practice charges filed by non-complying unions, and to investigate such charges if it desires to do so, but to prohibit the issuance of a complaint on behalf of a union which has not, by that time, come into compliance.[5]

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[4] This case is controlled by the provisions of Section 9 (h) as originally enacted, which are set forth in the Appendix, p. 16, *infra*. Subsequent to the Board's decision here, the provisions for holding union-shop elections were eliminated from the Act, and, in conformity therewith, the reference to union-ship petitions was deleted from Section 9 (h). Public Law 189, 82nd Cong., 1st Sess., approved October 22, 1951, and n. 9, pp. 10-11, *infra*.

[5] As a matter of administrative policy, the Board, to conserve its budget and personnel, shortened the grace period which the statute permits. Instead of affording the full period between filing of the charge and the issuance of a com-

Congress' enumeration of the three different kinds of proceedings in Section 9 (h), and its use of different words to describe the limitation applicable to each, furnishes "strong reasons for supposing that so striking a change in expression could only have proceeded from a deliberate difference of intent." L. Hand, J., in *Securities and Exchange Commission* v. *Collier*, 76 F. 2d 939 (C. A. 2). See also *Crawford* v. *Burke*, 195 U. S. 176, 190. To ascribe the differences in language merely to inadvertence is to overlook the fact that Congress was obviously familiar with the three different types of proceedings and that the language it used is, in each case, appropriate to the procedure to which it applies. By giving no effect what-

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plaint for compliance, the Board provided for dismissal of a charge unless there has been compliance with Section 9 (h) "within a reasonable period * * * not to exceed 10 days" after the charge has been filed. National Labor Relations Board, Statement of Procedure, 29 C.F.R., Sec. 101.3 (1949 ed.). The Board grants additional extensions, up to the time the complaint is filed, if the charging union demonstrates that it is making good faith efforts to come into compliance and there is reason to believe that compliance will be achieved within a reasonably short period. Under the interpretation of the court below, of course, the Board could not allow even this 10-day period for compliance.

The Board's 10-day rule was satisfied here because, as understood and applied at the time the instant charge was considered and the complaint issued, that rule did not contemplate compliance with Section 9 (h) by officers of parent federations. Thus, the Board was without authority to issue the complaint here only if, as the court below concluded, Section 9 (h) speaks as of the time the charge was filed.

ever to those differences, the court below violated the "cardinal rule" that "significance and effect shall, if possible, be accorded to every word" and clause of a provision. *Ex parte The Public National Bank of New York*, 278 U. S. 101, 104.[6]

Reading the statute as Congress wrote it is consistent with the general policy of the legislation. In unfair labor practice cases, to permit retention of the privilege of filing a charge before the statute of limitations runs, even if the union may not be able during the six month period to achieve complete compliance, both preserves the possibility of remedying unfair labor practices which might otherwise fortuitously be lost and constitutes an incentive to compliance. Both objectives are consonant with Congress' purposes in enacting the statute.

That the language of the statute is plain and unambiguous was recognized by the Joint Committee on Labor-Management Relations. The problem was called to the attention of the Joint Committee in June 1948, by General Counsel Denham, who pointed out that, due to the variations in Section 9 (h), he was obliged to make different allowances for compliance in the different types of cases; that, for unfair labor practice cases, compliance was only required by the time a complaint

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[6] Accord: *D. Ginsberg & Sons, Inc.* v. *Popkin*, 285 U. S. 204, 208; Sutherland, *Statutory Construction* (3d ed., 1943), Sec. 4705; 50 *American Jurisprudence*, § 274.

was to be issued; and that, by thus providing a period between filing of the charge and the issuance of a complaint for compliance, Section 9 (h) was impairing the six-month limit on the filing of charges, imposed by Section 10 (b).[7] In its report, issued in December 1948, the Committee recognized that these differences were necessitated by the specific language of Section 9 (h), and recommended that the Section be amended to read "no petition under Sections 9 (c) and 9 (e) (1), and no charge by a labor organization under section 10 (b) *shall be entertained unless* * * *". (Emphasis added.)[8] Although, in October 1951, Congress amended the Act, including, *inter alia*, an amendment of Section 9 (h) itself, this recommendation of the Joint Committee was not adopted. Public Law 189, 82nd Cong., 1st Sess., approved October 22, 1951.[9]

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[7] Hearings before the Joint Committee on Labor-Management Relations, 80th Cong., 2nd Sess., pp. 1171-1172.

[8] Report of the Joint Committee on Labor-Management Relations, S. Rep. No. 986, Pt. 3, 80th Cong., 2nd Sess., pp. 41-43.

[9] The object of this amendment was to avoid the holding of new representation elections in cases where the prior elections had been made vulnerable by this Court's decision in the *Highland Park* case, *supra*, and to eliminate altogether the necessity for holding union-shop elections as provided in Section 9 (e). The only change which the amendment made in the original text of Section 9 (h) was to delete the words "no petition under section 9 (e) (1) shall be entertained." The legislative history emphasizes that this amendment was not intended to affect whatever provisions the original Section

2. The court below clearly erred in concluding that the *Highland Park* decision, 341 U. S. 322, supported its interpretation of Section 9 (h). In that case, the C. I. O.'s compliance with Section 9 (h) occurred *after* the complaint had issued,[10] and thus the problem here presented, the effect of compliance perfected *before* complaint but after charge, was not before this Court. In view of the facts before the Court in that case, the statement in the opinion—"While the C. I. O. officers have since filed the affidavits, they were not on file at any time relevant to this proceeding" (341 U. S., at 325)—means only that a complaint which has been issued at a time when the charging union was not in compliance is not validated retroactively by subsequent compliance.

3. The question presented is of substantial importance in the administration of the Act. There are about ten additional cases, already in the Courts of Appeals or about to be filed therein, in

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9 (h) had made respecting the time when its disqualification becomes effective. 97 Cong. Rec. 10463-10464; H. Rep. No. 1082, 82nd Cong., 1st Sess., p. 2.

[10] As the Board's decision reveals (*Highland Park Manufacturing Company*, 84 NLRB 744, 749), the complaint was issued on January 10, 1949, more than twelve months before the C.I.O.'s compliance. Similarly, in all the other cases relied on by the court below (R. 589), the federation compliance occurred after the complaint had issued. See the Board's decisions in *Postex Cotton Mills, Inc.*, 80 NLRB 1187, 1189; *J. I. Case Company, Bettendorf Works*, 89 NLRB 269; *Clark Shoe Company*, 88 NLRB 989, 991.

which, like the instant case, compliance with Section 9 (h) was effected after the charge was filed but before any complaint issued. The identical situation is also present in approximately eight other cases which are still before the Board in various stages of decision, and in an unascertainable number of cases still in the Board's field offices. In addition, if the decision of the court below stands, the Board would be precluded from deciding cases based on complaints issued after the C. I. O. came into compliance where a previous complaint based on the same charge had been dismissed pursuant to the *Highland Park* decision, *supra*. The General Counsel has already authorized the issuance of new complaints in two such cases.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

GEORGE J. BOTT,
General Counsel
National Labor Relations Board.

MAY, 1952.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), are as follows:

* * * * *

"SEC. 9. * * *

* * * * *

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for

the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

"(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which

it is an affiliate or constituent unit has complied with its obligation under this subsection.

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

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No. 97

In the Supreme Court of the United States

OCTOBER TERM, 1952

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THOMAS W. DANT, ET AL., CO-PARTNERS, DOING BUSINESS AS DANT & RUSSELL, LTD.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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NATIONAL LABOR RELATIONS BOARD, PETITIONER

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THOMAS W. DANT, ET AL., CO-PARTNERS, DOING BUSINESS AS DANT & RUSSELL, LTD.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 195 F. 2d 299 (R. 588-590). The findings of fact, conclusions of law, and order of the Board (R. 6-38, 50-56, 59-60) are reported at 92 NLRB 307, and 95 NLRB 252.

JURISDICTION

The decree of the Court of Appeals (R. 590-591) was entered on March 20, 1952. The petition for a writ of certiorari was filed on June 2, 1952, and was

granted on October 13, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254, and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

An unfair labor practice charge was filed by a union at a time when the officers of this union had submitted the non-Communist affidavits prescribed by Section 9 (h) of the National Labor Relations Act, as amended, but the officers of the Congress of Industrial Organizations, with which the charging union was affiliated, had not. The officers of the C. I. O. submitted their affidavits, however, before the General Counsel, on behalf of the Board, issued a complaint based upon the union's charge. The question presented is whether the Board may properly issue an unfair labor practice complaint at a time when the charging union is in full compliance with Section 9(h), notwithstanding that there was not such full compliance when the charge was filed.

STATUTE INVOLVED

The statutory provision principally involved is Section 9 (h) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, 151, *et seq.*). This provision and other relevant portions of that Act are set out in Appendix C, *infra*, pp. 76-82.

STATEMENT

On July 18, 1949, the Company discharged two employees, Max Gassner and Henry J. Christopherson (R. 21; 71, 183, 432). Thereafter, on August 3, 1949, International Woodworkers of

America, Local 6-7, the bargaining representative of the Company's employees, filed a charge with the Board, alleging that the discharges violated Section 8 (a) (3) and (1) of the Act (R. 6-7, 59; Appendix D, p. 87, *infra*). There were on file with the Board at the time non-Communist affidavits executed by officers of the union, as described in Section 9 (h) of the Act. Affidavits executed by the officers of the C. I. O., of which the charging union was an affiliate, were not filed with the Board until December 22, 1949 (see note 2, *infra* p. 4).

On or about March 27, 1950, the General Counsel on behalf of the Board issued a complaint based on the charge filed by the union (R. 1-4, 7, 59). The customary proceedings were then held before a Trial Examiner and before the Board. On November 29, 1950, the Board issued its decision and order finding that the discharges were violative of the Act as alleged in the complaint, and directing the Company to take appropriate remedial action (R. 6-38, 50-56).

On June 6, 1951, after this Court had decided in the *Highland Park* case[1] that Section 9 (h) required the filing of affidavits by officers of parent federations like the C. I. O., the Company requested the Board to reconsider its order. In that request the Company urged, *inter alia,* that the Board "lacked jurisdiction to proceed with the case" because Section 9 (h) had not been fully complied with (R. 57-59).

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[1] *National Labor Relations Board* v. *Highland Park Manufacturing Company*, 341 U.S. 322 (May 14, 1951).

On July 17, 1951, the Board denied the Company's request for reconsideration (R. 50-60). With respect to the Section 9 (h) contention, the Board held that the Section "requires compliance at the time of the issuance of the complaint, rather than at the time of the filing of the charge" (R. 60, n. 3). The Board found that on this interpretation the requirement of Section 9 (h) had been fully met:

> We have administratively determined that the charging union, as well as its parent federation, the Congress of Industrial Organizations, were in full compliance with the filing requirements of Section 9 (f), (g) and (h) of the Act substantially in advance of the issuance of the complaint in this proceeding [R. 59-60].[2]

The Board then petitioned the court below for enforcement of its order of November 29, 1950 (R. 576-582). The court, without reaching the merits of the unfair labor practice findings, set aside the Board's order on the ground that, under Section 9 (h), "the Board was not empowered to entertain the charge or to issue the complaint or the order" (R. 589). Relying, *inter alia*, on this Court's decision in *Highland Park*, 341 U. S. 322, the court below construed Section 9 (h) as prohibiting the

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[2] As this Court observed in the *Highland Park* case, the officers of the C. I. O. filed the affidavits prescribed by Section 9 (h) on December 22, 1949, about three months before the complaint herein was issued. According to the Board's administrative records and the opinion of the court below (R. 589), International Woodworkers of America, Local 6-7, was in compliance with Section 9 (h) both at the time the charge was filed and when the complaint issued.

issuance of any complaint unless the charging labor organization was in full compliance at the time its charge was filed. Since the officers of the C. I. O. were not yet in compliance at the time the charge in this case was filed, it followed, in the court's view, that Section 9 (h) barred issuance of the General Counsel's complaint after they came into compliance (R. 589-590).

SUMMARY OF ARGUMENT

I

Section 9 (h) imposes a condition, the filing of non-Communist affidavits by labor organizations, upon action by the Board in each of the three kinds of proceedings which the Board is authorized to conduct: representation cases under Section 9 (c) of the Act, union-shop election cases under Section 9 (e) (1) of the Act, and unfair labor practice cases under Section 10 (c) of the Act. A single clause—"unless there is on file with the Board an [non-Communist] affidavit executed contemporaneously or within the preceding twelve-month period"—fixes the time when affidavits must be on file in order to enable the Board to take the specified action in all three types of proceedings. This clause modifies the words "no investigation" in representation cases, "no petition" in union-shop elections, and "no complaint" in unfair labor practice cases. Consequently, the section prohibits the Board from conducting an investigation in representation cases, from entertaining a petition in union-shop election cases and from issuing an un-

fair labor practice complaint unless the requisite affidavits are on file at the time any of these steps are taken by the Board.

To relate the "unless" clause to the charge rather than to the complaint, as does the court below, destroys the grammatical symmetry of Section 9 (h) and distorts its natural reading. That reading transforms the language "no complaint shall be issued," into "no charge shall be entertained." If Congress had desired to preclude the Board from entertaining charges rather than issuing complaints, it would undoubtedly have said so. Indeed, the very formula it used in prohibiting the Board from entertaining petitions for union-shop elections was available for this purpose. That Congress used different language to describe the different stages of the different proceedings to which the limitation applied shows the importance of reading the statute as Congress wrote it. "[S]o striking a change in expression could only have proceeded from a deliberate difference of intent." L. Hand, J., in *Securities and Exchange Commission* v. *Collier*, 76 F. 2d 939 (C. A. 2).

II

In the two changes of wording made in the compliance provisions prior to their enactment which are relevant to the question in this case, the draftsmen of Section 9 showed that the present language was intended to make the issuance of the complaint rather than the filing of the charge the stage of an unfair labor practice proceeding at which the re-

quired documents had to be on file. Similarly, on the two occasions subsequent to the enactment of Section 9 (h) when Congress considered the Board's construction which is now questioned before this Court, Congress apparently accepted the Board's reading of Section 9 (h) as warranted by the statutory language.

III

Under the Board's construction of Section 9 (h), Communist-led unions derive no benefits from the Act. Filing of unfair labor practice charges by such unions only serves to emphasize to the employees they represent that the denial of Board assistance, which is dramatized by the General Counsel's dismissal of a charge for failure to file non-Communist affidavits, is the result of Communist leadership in those unions. Permitting labor organizations to file charges and thereby preserve their causes of action within the six-month limitation period does not confer upon non-complying unions any "benefit" which, so far as appears, Congress intended to deny them by Section 9 (h).

IV

The Board's reading of Section 9 (h) should be given great weight, for "it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making its parts work efficiently and smoothly while they are yet untried

and new." *Norwegian Nitrogen Co.* v. *United States,* 288 U. S. 294, 315.

V

Contrary to the view of the court below, the issue in this case is not controlled by this Court's decision in *National Labor Relations Board* v. *Highland Park Manufacturing Co.,* 341 U. S. 322.

ARGUMENT

Introduction

Section 9 (h) of the Act constitutes the legislative method adopted by Congress in 1947 to eliminate Communist leadership from labor unions. By disabling unions whose officers did not execute non-Communist affidavits from enjoying the benefits of the Act, Congress hoped to "make it difficult for [those] unions to remain effective," and to "exert * * * pressures on unions to deny office to Communists * * *," *American Communications Association* v. *Douds,* 339 U.S. 382, 390, 393. Accordingly, the following procedural limitations were written into the Act (Section 9 (h)):

> No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board

> [a non-Communist] affidavit executed contemporaneously or within the preceding twelve-month period by each officer * * *."[3]

Manifestly, this section deprives the General Counsel of authority to issue a complaint unless the charging union has complied with the affidavit filing requirements. The Board has implemented this provision, together with its companion provisions, Section 9 (f) and (g), by providing forms and prescribing procedures which must be followed by the charging union before a complaint will issue. While these procedures are discussed more fully below, pp. 51-55, it suffices to note here that under no circumstances will a complaint issue setting the Board's machinery in motion unless the affidavits are on file. The Regional Office will receive a charge from a non-complying union, but the charge will be dismissed for want of compliance unless within ten days after the filing the charging union has come into compliance or made a reasonable showing that it is taking the necessary steps in that direction. In the latter event, the Regional Office will retain the charge, but the case will not be subject to the usual investigation or processing, and no complaint will issue until full compliance has been achieved.

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[3] Subsequent to the Board's decision here, the provisions for holding union-shop elections under Section 9(e)(1) were eliminated from the Act, and in conformity therewith, the reference to union-shop petitions was deleted from Section 9(h). Public Law 189, 82nd Cong., 1st Sess., 65 Stat. 601. This case, of course, is controlled by the provisions of Section 9(h) as originally enacted, from which the portion quoted in the text is taken.

Consequently, unlike the situation in the *Highland Park* case, *supra*, the Board's construction of the statute in no way obviates or minimizes either the necessity for, or the number of, non-Communist affidavits. No union not in full compliance can obtain the use of the Board's machinery. The difference between the Board and the court below goes only to the time the affidavits must be filed. The question is whether the statutory condition precedent to the issuance of a complaint is satisfied by compliance at the time of the issuance of the complaint, or whether there must be compliance at the time of the filing of the charge.

The court below and two other courts of appeals[4] have held that Section 9 (h) does not permit the issuance of a complaint unless the necessary affidavits are on file when the charge is made. The Board, on the other hand, has consistently held that this Section "requires compliance at the time of the issuance of the complaint, rather than at the time of the filing of the charge" (R. 60, n. 3).[5] With deference to the views of the courts which have disagreed with the Board, we believe that the Board's construction (1) is required by the plain language of the statute; (2) is supported by the

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[4] *National Labor Relations Board* v. *Nina Dye Works*, 198 F. 2d 362 (C.A. 3); *National Labor Relations Board* v. *American Thread Co.*, 198 F. 2d 137 (C.A. 5). Petitions for certiorari have been filed in both cases, Nos. 460 and 459, this Term. No other courts have passed on the question.

[5] In support of its holding in this case, the Board cited its previous rulings in *Southern Fruit Distributors*, 80 NLRB 1283, and *H. & H. Manufacturing Co.*, 87 NLRB 1373. See also, *Carolina Mills*, 92 NLRB 1141, enforced without discussion of this point, 190 F. 2d 675 (C.A. 4).

legislative history of the filing provisions; (3) effectuates the Congressional purpose to put pressures upon unions to rid themselves of Communist leadership by denying them benefits under the Act, as Congress intended; and (4) should be sanctioned in view of its reasonableness and its long and consistent application by the administrative agency responsible for providing for the successful operation of the provision.

I.

The Language and the Statutory Context of Section 9(h) Support the Board's Conclusion That the Affidavits for Which That Section Provides Are Required to Be on File When a Complaint Is Issued, But Not When a Charge Is Filed

A. The Statutory Scheme

The filing requirements of Section 9 were superimposed by Congress in 1947 on the familiar procedural framework pertaining to unfair labor practice cases which had been established in the original Wagner Act. The initial step in this procedure is the filing of a charge. This charge is not filed *by* the Board or any of its agents; it is filed *with* the Board by a person or a labor organization alleging that an unfair labor practice has been committed. Its function is "merely [to set] * * * in motion the machinery of an inquiry." *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U.S. 9, 18. The Board "is not required by the statute to move on every charge; it is merely enabled to do so." *Ibid.* Consequently, the charge does no more than bring into play the authority of

the General Counsel to conduct a preliminary investigation into the allegations of the charge to determine whether they have *prima facie* substance and warrant invocation of the Board's remedial processes. Section 3 (d) of the Act. See also, *Herzog* v. *Parsons,* 181 F. 2d 781 (C.A. D.C.), certiorari denied, 340 U.S. 810. Charges which survive this initial screening, and are not disposed of on other grounds,[6] may become the basis for the issuance of a complaint if the General Counsel, in the exercise of his discretion, so decides. Accordingly, as the Court of Appeals for the Fifth Circuit has stated:

> The charges are addressed to the Board and are not cases at all. The case between the Board and the employer begins with the complaint prepared by the Board' [*National Labor Relations Board* v. *Tex-O-Kan F. Mills Co.,* 122 F. 2d 433, 437 (C.A. 5).]

B. The Grammatical Structure of Section 9 (h)

The limitations imposed on the Act's unfair labor practice procedure by Section 9 (h) provides that "no complaint shall be issued pursuant to a charge made by a labor organization * * * unless affidavit executed contemporaneously or within the preceding twelve-month period by each officer * * *." To reach its result in this case, the court below held that the "unless" clause of the language

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[6] A large majority of the charges filed are never litigated as unfair labor practice cases. In the fiscal year ended June 30, 1951, for example, 87.3 percent of such charges were disposed of by dismissal, adjustment, or otherwise. Sixteenth Annual Report of the National Labor Relations Board, Table 7, p. 299.

we have quoted requires that the affidavits be on file at the time the charge is filed rather than at the time the complaint is issued. This reading, we submit, distorts both the apparent meaning and the grammatical sense of the language.

To understand the grammatical functions of the "unless" clause in Section 9 (h), it must first be recognized that this modifying clause is not limited to unfair labor practice cases, but applies equally to representation cases conducted under Section 9 (c) and union-shop elections provided for in Section 9 (e) (1).[7] Specifically, the requirements of the "unless" clause must be satisfied as a prerequisite to three separate steps undertaken by the Board or the General Counsel, which are applicable respectively to the three distinct proceedings described; hence, the language, "no investigation * * *, no petition * * *, and no complaint * * *." It seems clear that the time at which the affidavit requirements of the "unless" clause must be met with respect to the first two kinds of proceedings are before the "investigation" and the

[7] In order better to visualize the structure of Section 9(h), we print below the applicable portions of that section with underscoring which emphasizes the three separate limitations it makes and the conditional "unless" clause which fixes the time at which the affidavits must be on file.

> *No investigation* shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, *no petition* under section 9(e) (1) shall be entertained, *and no complaint* shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, *unless there is on file with the Board [a non-communist] affidavit executed contemporaneously or within the preceding twelve-month period by each officer* * * *.

"petition," respectively. To preserve the symmetry of the draftsmanship of this provision, it necessarily follows that the time made critical for complaint proceedings is issuance of the "complaint," for the words "complaint," "investigation" and "petition" stand in parallel construction, and are modified in identical fashion by the "unless" clause that follows. The phrase "pursuant to a charge made by a labor organization", which under the reading of the court below is modified by the "unless" clause, is inserted in Section 9 (h), not for the purpose of limiting the time when affidavits are to be filed, but solely to make it clear that the limitation on complaints is restricted to charges filed *by* such organizations and does not apply to charges filed by individuals, or by employers *against* such organizations. The phrase thus follows the pattern established by the similar phrase in Section 9 (h) which applies to representation proceedings, "* * * raised by a labor organization under subsection (c) of this section * * *."[8] There is no such qualifying clause, nor is one needed, in the union-shop election provision, because all petitions for such an election will, of course, be filed on behalf of a union.

The evident purpose of the draftsmen of Section 9 (h) was to achieve economy of expression through use of a single modifying clause, the "unless" clause, to refer alike to the preceding key words which are related to it, and thus avoid the necessity of repetition. The careful choice of

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[8] Cf. *Herman Loewenstein, Inc.*, 75 NLRB 377, 382.

language and use of technical words peculiarly descriptive of the applicable Board procedures permit no other conclusion. The method of expression in Section 9 (h) cannot be a happenstance. Viewed in this light, it is significant that, having adopted the constructional pattern of "no investigation * * *, no petition * * *, and no complaint * * * unless * * *," Congress—assuming it intended the result reached by the Board—could scarcely have expressed it otherwise than in the language actually employed; to make its meaning any clearer, Congress would have been forced awkwardly to repeat its reference not only to "complaint" but also to "petition" and "investigation" after the word "contemporaneously."[9] If, on the other hand; Congress intended the result reached by the court below, making the time of the filing of the charge the decisive date for the filing of affidavits, that could easily have been accomplished by deleting the reference to "complaint" in Section 9 (h) and inserting in its stead a reference to entertaining or investigating a charge. Indeed, as we argue more fully below, pp. 22-23, this was the very pattern Congress had before it in the same section in connection with union-shop petitions under Section 9 (e). Rejecting that

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[9] Thus, retaining the structure of the first part of the Section, the "unless" clause would have had to read, "unless there is on file with the Board an affidavit executed contemporaneously *with the investigation, petition or complaint, as the case may be*, or within the preceding twelve-month period . . ." (Emphasis to indicate added wording.) Compare the wording of S. 871, from which the language of Section 9(h) apparently was adopted, discussed pp. 27-28, *infra*.

alternative, Congress demonstrated the reason for, and the controlling force of, the grammatical construction employed in Section 9 (h), which makes the date of issuance of the complaint rather than the date of filing of the charge the critical date for the filing of the affidavits.

Since the limitation imposed by Section 9 (h) goes to the issuance of a complaint rather than the entertaining of a charge, it is logical that the limiting "unless" clause should refer to the time the complaint is issued, and not to the earlier event of the filing of the charge. For if the date upon which the charge is filed is made critical, as the court below held, the statutory interdiction against issuance of a complaint is surplusage. There is no occasion for the statute to forbid the issuance of a complaint if the General Counsel is precluded from accepting the prerequisite charge. It is normally to be expected that when an event is conditioned on the performance of specified acts, the same event fixes the time when the conditions must be met. And here, we think it clear that the draftsmen of Section 9 (h), in making the issuance of a complaint, and not the filing of a charge, the event which is conditioned upon the filing of the requisite affidavits, adopted the normal device of making the time of the conditioned event, *viz.*, issuance of the complaint, the time at which the affidavits must be on file.

C. The Meaning of Section 9 (H) As Evidenced By the Statutory Context In Which It Appears

From what we have already shown, it is apparent that Section 9 (h) limits the three different kinds of Board proceedings to which it applies in separate ways, using technical language in each case which has specific and significant relation to the special nature of the proceeding to which the language applies. In the case of representation elections, which are initiated by petitions filed with the Board, the limitation attaches to the investigation; with union shop elections, the petition itself may not be entertained; and in unfair labor practice cases, it is the issuance of the complaint which is conditioned upon the filing of the affidavits. The explanation for this careful differentiation may, we think, be found by reference to the procedural characteristics of each of these three separate proceedings, which make the differentiation appropriate.

Thus, in representation cases it is appropriate to prohibit the investigation of questions concerning representation, rather than entertainment of the petitions which initiate such cases, because of the Board's long-established "contract bar" rules, with which Congress was familiar and which it did not desire to disturb.[10] The effect of these rules, which seek to reconcile the dual statutory objectives of stability in a contractual bargaining relationship

[10] S. Rep. No. 105, 80th Cong., 1st Sess., 10, 11, 25; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 50.

and of opportunity for employees to change their bargaining representatives, is to limit the frequency of challenges to the representative status of an incumbent union, by permitting new representation questions to be raised before the Board only during a limited period near the expiration of an existing contract term. See, *e.g.*, Second Annual Report of the National Labor Relations Board, pp. 118-119 (1937); *Sanson Hosiery Mills, Inc.*, 84 NLRB 654, 92 NLRB 1102, enforced, 195 F. 2d 350 (C. A. 5), certiorari denied, No. 243, this Term.[11] Accordingly, it is extremely important to labor organizations which seek to replace existing representatives as the designated agents of the employees that they be able to file the petition for representation at the propitious moment with respect to the termination date of existing contracts. Otherwise they are foreclosed from having an election held until the succeeding contract has expired—perhaps two years later. As already noted, these principles were fully developed in 1947 when Section 9 (h) was adopted, and were expressly approved by Congress.

But, as we show more fully below, pp. 48-51, it is sometimes difficult, and even impossible, for unions to achieve compliance with the filing requirements

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[11] The principles of "contract-bar" have been judicially sanctioned as a "reasonable administrative ruling": *National Labor Relations Board* v. *Geraldine Novelty Co.*, 173 F. 2d 14, 17 (C.A. 2). See also, *Iob* v. *Los Angeles Brewing Co.*, 183 F. 2d 398, 404 (C.A. 9); *Fay* v. *Douds*, 172 F. 2d 720, 724 (C. A. 2); *National Labor Relations Board* v. *Grace Co.*, 184 F. 2d 126, 129 (C. A. 8); *National Labor Relations Board* v. *Public Service Co-op Transport*, 177 F. 2d 119, 124 (C.A. 3).

of Section 9 (f), (g) and (h) at any given time, or to remain in continuous full compliance thereafter; even unions whose established policy is to remain in compliance and which are completely free from suspicion of Communist leadership, have frequent lapses through no fault of their own. The draftsmen of the legislation must have realized that unless such unions and the employees who wish to be represented by them were to be denied the opportunity to initiate representation proceedings for long periods of time because of a temporary lapse from compliance during the relatively very brief interval when the contract bar rules permit such cases to be filed, it was necessary to allow petitions to be filed during a period of noncompliance, even though further steps were forbidden until the necessary documents were executed and on file with the Board. In this way, injury to legitimate unions which would soon be in compliance might be avoided, and at the same time no substantial benefit would accrue to Communist-led unions which, of course, could not comply. This was the scheme which Congress utilized.

The union-shop election procedure, on the other hand, involved no such difficulties or necessities for accommodation as those pertaining to representation cases. No investigation or hearing is called for; the Board's task is simply to conduct an election upon a proper showing made by the petition. No reason existed to permit the Board to accept petitions in these cases unless the petitioning union had complied with the Section 9 requirements, and the

limitation was written accordingly, *viz*, "no [union-shop] petition * * * shall be entertained."

Unfair labor practice cases, like representation cases, are affected by intervening statutory principles of which the draftsmen of Section 9 (f), (g), and (h) apparently took cognizance. For the Act, in Section 10 (b), imposes a six-month period of limitations on charges filed with the Board, but makes no such limitation upon the issuance of complaints based upon timely filed charges. The practical consequence of this provision to labor organizations is similar to that resulting from the impact of contract bar rules on the filing of representation petitions—in either case it is of the utmost importance that the initiating document be filed during the allowable interval. If non-compliance with the requirements of 9 (f), (g), and (h) were made fatal to such filing, cases would be subject to defeat because of a lapse from compliance even though the union involved both wished and was attempting in good faith to maintain itself in compliance. As we show, *infra*, pp. 50-51, this difficulty may be present in unfair practice cases even though the allowable interval in which to file a charge is six months. Two reasons for this are (1) the time consumed by the normal practice of employers and unions in attempting to settle disputes through negotiation and adjustment before resorting to litigation before the Board by the filing of a charge, and (2) the obvious fact that it is not always easy to unsaddle within a six-month period established Communist leadership and replace it with officers who

can and will sign the non-Communist affidavits. The construction of Section 9 (h) for which we contend avoids this difficulty in the same manner the contract bar problem is resolved in the representation procedure. Thus, filing of the charge permits the Board to preserve the unfair labor practice case for a reasonable time, as it does (see *supra*, p. 9), even though the charging union may have temporarily lapsed from compliance. At the same time no benefit results to unions which are Communist-led because the critical step of issuing a complaint is withheld until the requirements of Section 9 (h) have been satisfied, and, obviously, no Communist-led union gets any advantage from filing a charge which, under the Board's rules, is doomed to early dismissal unless a showing is made that prompt steps are being taken to eliminate the disqualified leaders. See pp. 44-45, *infra*.

It is true that the explanation which we have given for the differences Congress made in the application of Section 9 (h) to the three proceedings with which it deals was not discussed in the documents or debates which reflect the legislative history of this provision. In fact, so far as our research discloses, no express explanation for the exact wording of the filing provisions appears in the legislative history. But this is not surprising, for the language which now appears in the filing provisions of Section 9 was framed in unrecorded sessions of the Senate Committee which reported out S. 1126, the forerunner in the Senate of the 1947 amendments (see, *infra*, pp. 24-26), and was not

materially altered when it was inserted into Section 9(h). The persons responsible for the differentiations made by this Section thus were Senators whose membership on the Committee made them especially familiar with Board procedures and staff members of the Committee whose jobs require expertness in matters relating to the Board. Under these circumstances, we think it entirely reasonable to infer that the differences of language were intended to accommodate the Act's procedures in the manner that we have described; specifically, that Section 9 (h) was drafted to permit the filing of unfair labor practice charges by unions not in compliance at the time of filing, but to prohibit issuance of a complaint until compliance had been effected. Supporting this inference is the fact that there can be no other plausible explanation, except inadvertence, for the procedural differences of Section 9 (h). It would be strange indeed to ascribe to inadvertence the failure of the draftsmen of Section 9 (h) to make explicit the construction for which respondent contends. For the effect of respondent's reading of this section is to transform the language "no complaint shall be issued" to "no charge shall be entertained." And it is entirely clear that when Congress meant to limit the power of the Board "*to entertain*" a proceeding instituted by a noncomplying labor organization, it knew precisely how to say so, for it used those very words in the same section when dealing with union-shop elections, and the Ives bill, S. 871, from which the language of Sec-

tion 9 (h) was derived (pp. 25-27, *infra*), contained provisions that would have done the very same thing for complaint cases. See pp. 27-28, *infra*.

In short, Congress' enumeration of the three different kinds of proceedings in Section 9 (h), and its use of different words to describe the limitations applicable to each, furnishes "strong reasons for supposing that so striking a change in expression could only have proceeded from a deliberate difference of intent." L. Hand, J., in *Securities and Exchange Commission* v. *Collier*, 76 F. 2d 939 (C. A. 2). See also, *Crawford* v. *Burke*, 195 U.S. 176, 190. By giving no effect whatever to those differences, respondent's reading violates the "cardinal rule" that "significance and effect shall, if possible, be accorded to every word" and clause of a provision. *Ex parte The Public National Bank of New York*, 278 U. S. 101, 104.[12]

II

The Legislative History of Section 9(h) Supports the Board's Conclusion That the Requirements of That Section Must Be Fulfilled When the Complaint Is Issued Rather Than When the Charge Is Filed

One of the three courts of appeals which have disagreed with the Board in its construction of Section 9 (h), the Third Circuit in *National Labor Relations Board* v. *Nina Dye Works*, 198 F. 2d 362, petition for certiorari filed on November 20, 1952, No. 460, this Term, relies in part in reaching its

[12] Accord: *D. Ginsberg & Sons, Inc.* v. *Popkin*, 285 U. S. 204, 208; Sutherland, *Statutory Construction* (3d ed., 1943), Sec. 4705.

conclusion on statements made on the floor of the Senate when Congress was considering the 1947 amendments to the Act. From what we have said in Point I, we believe that this is the kind of case where "there is no need to refer to the legislative history [because] the statutory language is clear." *Ex parte Collett*, 337 U. S. 55, 61.[13] But if additional light upon the meaning of Section 9 (h) is to be sought in its legislative history, we submit that this source, viewed in its entirety, confirms the Board's conclusion rather than that of the Third Circuit. For both the structural changes this provision incurred during its progress through Congress before passage and the express consideration given by Congress to the question here presented after the 1947 amendments had been in effect strongly support the view that Section 9 (h) contemplated that the non-Communist affidavits be on file when a complaint issues in an unfair labor practice case rather than when the charge is filed.

A. The source of Section 9 (h) and the relevant language changes made to it before enactment

The language which now appears in Section 9 (h), making the filing of non-Communist affidavits by union officers a condition precedent to the issuance of a complaint in an unfair labor practice case, is derived from an earlier version of the companion provision, Section 9 (f), which imposes

[13] See also *Packard Co. v. National Labor Relations Board*, 330 U. S. 485, 492.

filing obligations of a different character. This language was carried over to Section 9 (h) by House and Senate Conferees as a substitute for the provisions of the House and Senate bills dealing with Communism in union leadership, which were deemed unsatisfactory as written.[14] The House bill as reported from committee had forbidden the Board to certify a labor organization as bargaining representative under Section 9 (c) if any of its officers was "a member of the Communist Party * * *," and the Senate bill had been amended on the floor of the Senate to include a substantially identical provision.[15] The conferees felt that this method of handling the subject was "impractical" because inordinate delays might occur in representation proceedings "while determination was made as to whether a man was a Communist."[16] Accordingly, the affidavit technique was adopted, and the language structure of Section 9 (f) was utilized, making the affidavit filing requirement apply to complaint cases and union-shop elections as well as to representation proceedings.

From the foregoing it is evident that the manner in which Section 9 (f) was intended to operate is an accurate index to the intent that accompanied Section 9 (h), for which the former subsection provided the pattern. Turning to Section 9 (f),

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[14] H. Conf. Rep. No. 510, 80th Cong., 1st Sess., pp. 11, 12, 49.

[15] 93 Cong. Rec. 4894-4895; H. R. 3020, 80th Cong., 1st Sess. (1947), pp. 33, 93.

[16] Senator Taft, explaining the Conference Report on the floor of the Senate, 93 Cong. Rec. 6447; see also 93 Cong. Rec. 6444, 6860.

its provisions are found substantially as they were finally enacted in S. 1126, as reported out of Committee on the floor of the Senate.[17] A financial reporting provision in a predecessor House bill was formulated along entirely different lines, imposing criminal penalties and making it an unfair labor practice for unions to fail to fulfill its requirements, and was discarded for the Senate version by the conferees.[18] Tracing further the origin of the structure of Section 9 (f) in the Senate Committee, it seems altogether likely that its terms were taken from S. 871, proposed by Senator Ives and referred to the Senate Committee on Labor and Public Welfare, which subsequently reported out S. 1126 containing the present Section 9 (f).[19] For although a variety of other proposals had been introduced both in the 80th and earlier congresses, to require labor unions to file operational and financial data, S. 871 is the only one which made such a requirement a condition of enjoying the Board's remedial processes in unfair labor practice cases. All other such proposals imposed criminal sanctions or merely disqualified noncomplying unions from being certified as exclusive bargaining agents under Section 9 (c) of

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[17] S. 1126, 80th Cong., 1st Sess. (1947), pp. 23-24.

[18] See H. R. 3020, 80th Cong., 1st Sess. (1947), pp. 26, 65-67; H. Conf. Rep. No. 510, 80th Cong., 1st Sess. (1947), pp. 51-52.

[19] Senator Morse, a member of the Senate Committee on Labor and Public Welfare, stated on the floor of the Senate, when S. 1126 was reported out of committee, that he "wish[ed] to commend the Senator from New York [Mr. Ives] who introduced legislation on the floor of the Senate, much of which will be found in this bill." 93 Cong. Rec. 3614.

the Act.[20] The Ives bill, S. 871, parallels the present Section 9 (f), with one significant difference, which we italicize below (S. 871, 80th Cong., 1st Sess. (1947), p. 4):

> No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization (1) shall file *with its petition raising such question or making such charge, as the case may be*, a statement [containing various data].

As Senator Ives explained on the floor of the Senate upon introducing this proposal, its language explicitly required a labor organization "to file with its * * * *charge* a statement of the names and addresses of its officers," etc., 93 Cong. Rec. 1935 (emphasis added). Thus, S. 871 proposed the requirement for which respondent in this case contends. But the language in S. 871, which expressly made the filing of the charge the time

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[20] See, S. 55, 80th Cong., 1st Sess. (1947), p. 19; S. 859, 80th Cong., 1st Sess. (1947), pp. 3-4; H. R. 3020, 80th Cong., 1st Sess. (1947), pp. 26, 65-67; H. R. 2748, 80th Cong., 1st Sess. (1947), p. 21; H. R. 2175, 80th Cong., 1st Sess. (1947), pp. 3-4; H. R. 880, 80th Cong., 1st Sess. (1947), pp. 21-22; H. R. 725, 80th Cong., 1st Sess. (1947), p. 35; S. 1642, 79th Cong., 1st Sess. (1945), p. 3; S. 10, 78th Cong., 1st Sess. (1943), p. 10; S. 1307, 78th Cong., 1st Sess. (1943), pp. 4-5; H. R. 6149, 77th Cong., 1st Sess. (1941), pp. 7-9; S. 1264, 76th Cong., 1st Sess. (1939), pp. 17-18.

when the necessary reports were to be on file, was deleted from Section 9 (f) as reported by the committee, and the present language was substituted. Although we have been unable to find any express explanation for this change, this action by the committee is further evidence of the fact that the draftsmen of the filing provisions of Section 9 knew precisely how to make the time of filing the charge the time when the required documents had to be on file, if that was their purpose. (See *supra*, p. 15.) And their refusal to adopt language so plainly appropriate to that end, which they had before them, can reasonably be attributed, we think, to their rejection of the scheme which it specified in favor of the scheme the present language plainly describes as a matter of spontaneous reading and grammatical sense.

Another change made during the legislative consideration of the filing provisions, this one relating to Section 9 (g), also fortifies the conclusion that the Board's construction is correct. Section 9 (g), as now written, imposes an obligation on labor unions to keep current the information filed under Section 9 (g), and, like Section 9 (f) and (h) maintains disqualifications in representation cases, union-shop elections and unfair labor practice proceedings for failure to comply with its terms. Section 9 (g), however, was amended before enactment in one important respect. As reported from committee, this section read, in applicable part, "* * * and no complaint shall issue with respect to a

charge filed by a labor organization *processed in its behalf* under section 10 unless it can show that it has complied with its obligation under this subsection." S. 1126, 80th Cong., 1st Sess. (1947), p. 25. (Emphasis supplied.) The words "processed in its behalf" plainly indicate that the draftsmen contemplated that the showing of compliance was not necessary until the charge had been processed and the complaint was ready for issuance. This reading accords with that the Board now gives to the present Section 9 (g) as well as 9 (f) and 9 (h). It is true that the phrase "processed in its behalf" was deleted by the Senate, but analysis of the circumstances of that deletion quite clearly shows that the amendment in this instance was intended to remove a redundancy and not to make any substantive alteration in meaning. For the change in Section 9 (g) was voted by the Senate at the request of Senator Taft, chairman of the committee which reported the bill to the Senate, as one of a bloc of 29 amendments which were described by Senator Taft as "a number of typographical and clerical errors * * * technical in nature" about which there was "no question * * * whatever." 93 Cong. Rec. 4015. Other changes made by this group of amendments included corrections of misspellings and punctuation, grammatical improvements, insertions of obviously omitted words, and the like. 93 Cong. Rec. 4015-4016. Upon assurance from Senator Taft that no substantive changes were included, the amendments

were agreed to en bloc and without debate. *Ibid.* Accordingly, an intent to change the import of Section 9 (g) as it read prior to its amendment cannot be attributed to Congress. Rather, we think it clear that the amendment served only to delete an unnecessary phrase from language that was already thought to say what the phrase merely reiterated.

The two changes which we have discussed are the only alterations we have been able to discover which are relevant to the issue in this case and which were made during the legislative period when the present language of Section 9 (h) was being framed. The absence of any full explanation in the legislative history of the exact reasons for these changes of course limits their value as indices of Congressional intent. We nonetheless believe that the interpretations we give to these changes are reasonable ones, and that to the extent that language changes are helpful toward ascertaining the intention of the draftsmen,[21] there is a strong suggestion here that Section 9 was not meant to prescribe a condition precedent to the filing of the charge.

B. References to Section 9 (h) in the Committee Reports and on the floor of Congress

In the opinion in the *Nina Dye Works* case, *supra*, the Court of Appeals for the Third Circuit refers to Senator Taft's statement on the floor of

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[21] See *Fox* v. *Standard Oil Co.*, 294 U. S. 87, 96; *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318.

the Senate following the passage of the Act that the purpose of Section 9 (h) was to make the filing of the affidavits "* * * a condition precedent to use of the processes of the Board * * *" 93 Cong. Rec. 6860. The court then suggests that "in the Senator's opinion the charge [may] * * * be considered part of the processes of the Board." 198 F. 2d at 365.[22]

The statement upon which the court relies is only one of a great many such statements made during the legislative history which are descriptive of the general operation of the filing provisions. Thus, the House and Senate conferees observed that the necessary documents had to be on file in order for labor organizations to "have charges processed in their behalf," or to "invoke the processes of the act," or to be eligible "for making charges."[23] Similarly, the Senate report accompanying S. 1126 stated that unions were required to file the information called for in Section 9 (f) "in order to be eligible * * * [to] have charges processed in their behalf."[24] Like statements were made by Senators and Representatives in discussing the

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[22] The court in the *Nina Dye Works* opinion also relied (198 F. 2d at 365) upon a statement by Congressman Hartley, made, not on the floor of the House, but in a book published by the Congressman in 1948, upon his retirement from office. But it should also be noted that the author was then addressing himself only to the problem of whether the parent federations were required to comply, rather than to the critical date of compliance, which is the issue before the Court here.

[23] H. Conf. Rep. No. 510, 80th Cong., 1st Sess. (1947), pp. 51, 52.

[24] S. Rep. No. 105, 80th Cong., 1st Sess. (1947), p. 26.

filing provisions during floor debate.[25] Significantly, such phrases as "processes of the Board" (p. 31, *supra*) or services of the Board" (93 Cong. Rec. 6497), used by committee reports and legislators to denote the Board action before which the necessary documents were to be filed, were employed interchangeably with the more general phrases, "benefits under the act,"[26] or "access to the powerful machinery of the Act."[27] It could be contended that the phrase "processes of the Board" could not refer to the charge, in determining when compliance was required, since the Board has nothing to do with the filing of the charge (*supra*, pp. 11-12), and that it is more likely that the term "processes" was used in the lawyer's sense of "legal process," *i.e.*, the "case" which begins with the General Counsel's issuance of a complaint (*ibid.*). However, we think a more realistic appraisal of the variety of expressions used in this connection, and the generality of their import, requires the conclusion that these expressions were intended to be descriptive in a broad sense of the impact of the filing provisions, but were not intended to specify their detailed technical operation. Certainly, there is nothing in them to suggest that they were directed to the precise problem now before this Court, the problem of identifying the exact time at which the documents were required

[25] See e.g., 93 Cong. Rec. 6497, 6499, 6516, 4767, 6455, 6381, 6860.

[26] H. Conf. Rep. No. 510, 80th Cong., 1st Sess. (1947), p. 46; and Senator Taft in 93 Cong. Rec. 6534.

[27] Senator Morse, 93 Cong. Rec. 6455. See also, 93 Cong. Rec. 6497, 6452.

to be filed. Viewed as terms of general description, we think they are wholly consistent with the Board's construction of the filing requirements of the Act. For the requirement that compliance be achieved before a complaint issues prevents effective access to the "processes of the Board," precludes in a very practical sense unions from having "charges processed in their behalf" (*infra*, pp. 54-55), and denies noncomplying unions the "benefits under the act."

In more specific language than that referred to above, Senator Taft in an analysis of the differences between the Senate bill and the Conference Report stated that "subsection 9 (f) and subsection 9 (g) require * * * labor organizations as a condition precedent to being recognized as representatives under section 9 or being permitted to file charges under section 10 * * * [to] file certain information."[28] Taken at face value, this statement signifies Senator Taft's concurrence with the view of the court below as to the time the filing of the necessary information is required. But there are at least two considerations which greatly minimize the reliance that can be placed on Senator Taft's statement. One is that in the paragraph following the one containing the language we have quoted, Senator Taft states in equally explicit terms that Section 9 (h) requires that the affidavits be on file when the complaint issues, thus making an apparent about-face in the direction of agreement with the Board's view.

[28] 93 Cong. Rec. 6444. See also 93 Cong. Rec. 3839.

Thus, he states, "the conference agreement provides that no * * * complaint [may be] issued unless the labor organization in question submits [non-Communist] affidavits," and he makes no reference to the filing of the charge.[29] The second reason for discounting the value of Senator Taft's remarks, insofar as they relate to the question here, is that they contain an obvious inaccuracy with respect to the time at which the filing obligation must be fulfilled in representation cases. For the Taft statement makes the filing requirement "a condition precedent to being recognized as representatives," whereas the statutory language indisputably specifies that the requirement is a prerequisite to an *investigation* in a representation case.

Senator Taft was, of course, fully versed in the provisions of the bill he sponsored. The fact that even he used such technically inaccurate language in discussing the bill makes clear, however, that the statements which we have discussed were not intended as technical guides to the mechanics of operation of the provisions by the Board's agents, but rather were directed toward explaining to persons less familiar with this legislation than himself the general effect and the purpose sought to be accomplished. The message of Senator Taft's statements is, we think, no more or less than that of all the statements made on the floor of Congress and in the committee reports which bear on the filing provisions; namely, that the general purpose and effect of these provisions is to impose a dis-

[29] 93 Cong. Rec. 6444.

ability on noncomplying unions with respect to representation cases, union-shop election cases, and unfair labor practice cases. To this extent such statements are accurate and have meaning. But, not being directed to the details of the mechanical operation of the filing provisions, they are of no substantial help in answering the question in this case.

Of all the events during the legislative history of the filing provisions, we believe the language alteration made by the Senate Committee in S. 871 and the amendment to Section 9 (g), both of which we have discussed, *supra*, pp. 27-30, afford the most reliable bases for inferences as to the legislative intent with respect to the time at which the necessary documents must be on file. But more reliable than any of the legislative history is, we repeat, the ordinary sense to be read from the statutory words themselves and their grammatical structure, both of which support the Board's decision in this case. "The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction." *Gemsco* v. *Walling*, 324 U. S. 244, 260.

C. Consideration of the meaning of Section 9 (h) by the Joint Committee on Labor-Management Relations in 1948.

Although the debates in Congress and the committee reports prior to the enactment of the filing provisions were not addressed to the precise ques-

tion now before this Court, Congress did consider this very question on two occasions thereafter. On both occasions, the Board's construction of Section 9 (h) was explicitly acknowledged by Congress and, as we shall show, was accepted as warranted by the statutory language. In these circumstances the post-legislative history of the provision in question constitutes a relevant factor in determining the original legislative meaning. See *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 276, 277; *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 313-315; *First National Bank* v. *Missouri*, 263 U. S. 640, 658; *United States* v. *Bowling*, 256 U. S. 484, 488; but cf., *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 47.

The first of these post-legislative treatments of the question in this case resulted from the study and report of the Joint Committee on Labor-Management Relations in 1948. This Committee was created by Title IV, Section 402 (7) of the Labor-Management Relations Act, 1947 (referred to elsewhere in this brief as the 1947 amendments to the Act), to study and investigate "the administration and operation of existing Federal laws relating to labor relations." Its report and recommendations have been described as an "illuminating" source of "persuasive evidence" of congressional intent. *National Labor Relations Board* v. *Wiltse*, 188 F. 2d 917, 921, 923 (C. A. 6), certiorari denied, *sub nom. Ann Arbor Press, Inc.* v. *National Labor Relations Board*, 342 U. S. 859. See also,

West Texas Utilities Co. v. *National Labor Relations Board*, 184 F. 2d 233, 235 (C. A. D. C.), certiorari denied, 341 U. S. 939.

In discharge of its functions, the Joint Committee conducted hearings during the course of which the then General Counsel of the Board, appearing as a witness, directed the Committee's attention to the fact that Section 9 (h) did not require non-Communist affidavits to be filed until the complaint issued. As the General Counsel testified (Hearings before the Joint Committee, 80th Cong., 2nd Sess., p. 1171):

> Then, there is another question with reference to the staggered provisions of the effectiveness of 9 (f), (g), and (h). It will be recalled that no petition [in a representation case] may be processed. It may be filed and docketed, but held there until there has been that compliance. No complaint may be issued. That would carry with it the inference that a charge may be filed and investigation made if the General Counsel feels it is called for, but when it gets to that point, no complaint may be entertained.

After making this statement the General Counsel recommended to the Committee that the filing provisions be amended to forbid a charge from being "entertained" unless the necessary documents were on file, in order to require compliance by a labor organization before the passage of the six-month limitation period between the conduct com-

plained of and the filing of charges provided for by Section 10 (b) of the Act (*ibid.*).

In its final report, the Joint Committee discussed, in connection with the General Counsel's testimony, the separate stages of representation cases, union-shop elections, and unfair labor practice proceedings at which the filing of reports and affidavits was required by Section 9 (f), (g), and (h). Referring to the exact question in this case, the report stated that "by implication the statutory treatment of unfair-labor-practice charges requires [the General Counsel] to accept such charges from a noncomplying union, perhaps investigate them fully up to the point of issuing complaint, at which point they become dormant."[30] Further on, the report concurred in the General Counsel's recommendations that the statutory language be amended to forbid the "entertaining" of charges unless the charging labor organization had complied with the filing requirements.[31] Since the report apparently accepted the General Counsel's reading of the filing provisions as a correct interpretation of the statute, we think it clear that the Committee's recommended amendment, which would have had the effect of adopting the construction for which respondent contends, was prompted by the Committee's belief that a change in the statute was required to achieve the result contemplated by the amendment.

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[30] Report of the Joint Committee on Labor-Management Relations, S. Rep. No. 986, Pt. 3, 80th Cong., 2nd Sess. (1948), pp. 41-42.

[31] *Ibid.*, pp. 42-43.

D. Congressional Consideration Given to the Board's Construction of Section 9 (h) During the Proposed Amendments to the Act of 1949

In 1949 the Senate again considered a number of amendments to the Act reflecting a legislative construction of the text of the filing provisions which accords with that of the Board. The basic legislative proposal dealing with labor-management relations which was before the Senate at that time was S. 249, favorably reported out of the Committee on Labor and Public Welfare. This bill in effect "repeal[ed] the Taft-Hartley Act completely and reenact[ed] the National Labor Relations Act of 1935." S. Rep. No. 99, 81st Cong., 1st Sess. (1949), p. 58. However, many amendments were proposed to S. 249 on the floor of the Senate, several of which dealt with filing requirements substantially identical to those enacted in 1947, and which demonstrated a congressional awareness that the present statutory treatment fixes issuance of the complaint rather than receipt of the charge as the time at which the filing must be accomplished.

One of these proposed amendments to S. 249, introduced by Senator Humphrey for a group of nine Senators, was intended to amend Section 9 (f) of the Act by permitting the Board to investigate representation petitions filed by noncomplying unions, but to prohibit further steps until compliance had been achieved. At the same time, this amendment was intended to retain the Board's construction of the filing provisions which permitted issuance of a complaint when compliance had been

effected, even though the charging union was not in compliance when the charge was filed. As explained by Senator Humphrey (95 Cong. Rec. 7718):

> Under the present bill, also, the National Labor Relations Board is prohibited, when faced with a representation proceeding or an unfair labor practice, from making any kind of an investigation [in the representation case] or issuing any kind of a complaint in the [unfair labor practice case] until the financial filing requirements are met. * * *
>
> Our amendment suggests * * * that the Board be prohibited from actually issuing a notice of hearing or conducting an election of [*sic*] making a union certification of [*sic*] issuing a complaint until such time as the financial requirements are made, but it does not prevent the Board from making an investigation.

The applicable part of the amendment's text by which this result was to be accomplished reads as follows (95 Cong. Rec. 7718):

> The Board shall not issue notice of hearing or conduct an election on petition of an employer under this section or issue any complaint based upon a charge filed by an employer under subsection (b) of section 10 of this act unless such employer * * * shall have prior thereto filed [the required information].[32]

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[32] The quoted provision, unlike the present Section 9(f), applied to employers. Another part of the proposed amendment applied the same requirements to labor organizations. The only difference between the language used in these two companion provisions, apart from identification of employer or

The significance of this proposal lies in the fact that a substantial alteration of the language of Section 9 (f) was considered necessary to permit the Board to investigate representation petitions filed by non-complying unions, but no change of structure was deemed necessary to make the issuance of a complaint, and not the filing of a charge, the time for complying with the financial requirements. Clearly, it was the understanding of the sponsors of this proposal, which was subsequently agreed to by the Senate as an amendment to S. 249 (95 Cong. Rec. 7720), that the language of the present Section 9 (f), which concededly has the same effect as that in 9 (h), does not require compliance when an unfair labor practice charge is filed, but only at the time a complaint is issued.

Another amendment to S. 249, introduced on the floor of the Senate by Senator Douglas for a group of eight Senators, and agreed to by the Senate, imposed the non-Communist affidavit requirement of Section 9 (h), but changed the wording of that Section to fix explicitly the time of filing the affidavits to correspond with the filing of the charge. The applicable portion of this proposal read (Amendment of June 6, 1949, to S. 249, 81st Cong., 1st Sess., pp. 1-2):

> * * * and no complaint shall be issued pursuant to a charge made by a labor organization

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labor organization, is that the words "prior thereto," contained in the text above, did not appear in the provision directed to labor organizations. However, since one of the purposes of these provisions was to equate the filing requirements between employers and unions, no difference in operation can be attributed to this variation. See 95 Cong. Rec. 7718.

> or employer under Section 10 unless there is on file with the Board [non-Communist] affidavits * * * *executed contemporaneously with the filing of any petition or charge* * * *. [Emphasis added.]

The floor debate (95 Cong. Rec. 7790-7791, 7794-7796) on this proposal does not refer to the reasons for the change in its language as compared to that now in Section 9 (h) of the Act, but the change itself would appear to signify that the sponsors did not believe the present language of Section 9 (h) was sufficient for their purpose.

Neither of the above proposals, although they were accepted by the Senate as amendments to S. 249 (95 Cong. Rec. 7720, 7796), was included in the bill that finally passed that body. For before S. 249 came to a final vote, an amendment in the nature of a substitute bill was introduced by Senator Taft and adopted by the Senate. 95 Cong. Rec. 8717. This substitute bill consisted of recommendations contained in the minority report of the Senate Committee on Labor and Public Welfare on S. 249, and its treatment of the filing provisions reveals that its sponsors likewise understood the present wording of those provisions to require compliance as a condition precedent to issuance of complaints and not to the filing of charges. Thus, in order to adopt the construction which respondent attributes to the present Section 9 (h), the substitute bill found it necessary to change the language of that section to read, in applicable part, "* * * and no charge made by a labor organiza-

tion under Section 10 (b) shall be entertained unless [the non-Communist affidavits are on file]." Min. Rep., S. 249, 81st Cong., 1st Sess. (1949), p. 75. On the other hand, the present wording of Section 9 (f), dealing with the filing of operational and financial data, was left undisturbed (*id.*, p. 74). The difference thus made in the two sections can only be explained by an intent to have them operate differently, *i.e.*, to require filing of the non-Communist affidavits to be completed before a charge could be entertained, while the filing of the financial and operational reports was not to be necessary until issuance of the complaint. And, of course, the significance of this to the present case is that the sponsors of the substitute bill in retaining the present statutory language to make the date of the complaint rather than that of the charge the critical date for filing the financial information required by Section 9 (f), revealed their agreement with the Board's construction of these filing provisions, which are couched in the same language as Section 9 (h).

The substitute bill as passed by the Senate was not acted upon by the House, and thus did not become law. Nonetheless, the legislative developments relating to S. 249 which we have described are important for this reason: They show a consistent and uninterrupted legislative understanding and apparent agreement, following the enactment of the 1947 amendments, with the Board's construction of Section 9 (h). So far as we are aware, no voice was raised to say that the Board's reading did violence to the letter or the spirit of Section 9 (h) as written.

III

The Board's Construction of Section 9 (h) Fully Effectuates Its Legislative Purpose

The three courts which have disagreed with the Board's reading of Section 9 (h) have not addressed themselves in their opinions to the specific contentions we have thus far advanced in this brief. The opinions of two of these courts, those of the Third Circuit in the *Nina Dye Works* case and the Fifth Circuit in the *American Thread* case, suggest that their disagreement with the Board was impelled by the view that the Board's construction does not fulfill the Congressional purpose of Section 9 (h) because under it noncomplying unions are granted benefits of the Act which are not available if Section 9 (h) is read to require compliance at the time charges are filed.

It is, of course, true that under the Board's reading of Section 9 (h) a noncomplying union may file a charge and thereby satisfy the six-month period of limitations under Section 10 (b), whereas under the reading approved by the court below the noncomplying union cannot do so. Accordingly, the court's construction creates an additional sanction —which the Board's construction does not create— against noncomplying unions by in effect establishing a six-month period of limitations applicable to the filing of the non-Communist affidavits as well as to the filing of the charge.

But it is equally true that a noncomplying union can obtain no relief from the Act under the Board's

reading, for the remedial processes of the Act can only be invoked by the issuance of a complaint. Acceptance by the General Counsel of a charge, which is subject to prompt dismissal under the Board's rules unless reasonable assurance is given that the necessary affidavits will be filed (see pp. 54-55, *infra*), is of no assistance whatever to a charging party unless followed by the issuance of a complaint. To the contrary, we cannot see how any Communist-led union would find it advantageous to file such a futile charge, because the effect of the filing is simply to emphasize to the employees, when the General Counsel dismisses the charge for noncompliance (*ibid.*), that Communist leadership is responsible for the denial of the benefits of the Act. Indeed, under the Board's rules implementing the statutory provisions (*ibid.*), the employer is not even kept under substantial harassment by such a charge, for it is dismissed after ten days unless legitimate assurances of diligent compliance are promptly forthcoming.[33] Accordingly, from the standpoint of depriving noncomplying unions of the Act's benefits, the Board's construction does not operate any differently than that contended for by respondent. In both views, Board assistance is effectively withheld from noncomplying unions.

Moreover, we do not believe that the problem of statutory construction presented by this case may be answered by saying, as does the Court of Appeals

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[33] Under the reading of the court below, no such grace period for compliance would be possible.

for the Fifth Circuit in the *American Thread* case, (198 F. 2d at 138), that "the broad purpose of the Act covers both" a prohibition against the filing of a charge and a prohibition against issuance of a complaint unless compliance has been achieved. For the "broad purpose" of eradicating Communism from labor organizations might justify not only a requirement that unions be in compliance when they file charges, but a variety of other penalties, which might certainly discourage Communism in labor unions, but which just as certainly were not written into the Act by Congress. For example, Congress could have provided that employees who were members of Communist-led unions should be denied statutory protection against conduct which would otherwise be an unfair labor practice; it could have barred employers from recognizing or dealing with Communist-controlled unions; or it could have provided for withdrawal of the prohibition against employer support and domination of labor organizations (Section 8 (a) (2)) and coercion of employees (Section 8 (a) (1)) if the employer's purpose was to defeat unions whose leadership was Communist. Congress did not adopt any of these approaches.[34] Instead, the method it chose to attain its ultimate objective—"to 'wholly eradicate and bar from leadership in the American

[34] See *National Labor Relations Board* v. *Pratt, Read & Co.*, 191 F. 2d 1006, 1008, 1009 (C. A. 2); *National Labor Relations Board* v. *Globe Wireless, Ltd.*, 193 F. 2d 748, 749, n. 1, 751 (C. A. 9); *National Labor Relations Board* v. *Augusta Chemical Co.*, 187 F. 2d 63, 64 (C. A. 5); Kearns, *Non-Communist Affidavits Under the Taft-Hartley Act*, 37 Georgetown Law Journal 297, 300.

labor movement * * * adherents to the Communist party' "[35]—was to withhold Board assistance from Communist-led organizations in each of the three kinds of proceedings which the Board was authorized to conduct. In adopting this method Congress stated that its *specific purpose* in enacting Section 9 (h) was to "[exert] pressure on unions to deny office to Communists" by withholding Board assistance from noncomplying unions. *American Communications Association* v. *Douds*, 339 U. S. 382, 393. We submit that this purpose is eminently fulfilled by the Board's reading of Section 9 (h), which, by permitting a noncomplying union to preserve its cause of action by filing a charge within the six-months period of limitation, serves as a spur and aid to that union in achieving compliance by the lure of specific reward in a remedy before the Board in connection with a concrete case. At the same time, as we have shown, Communist-led unions can take no comfort from being permitted to file charges, since the Board's dismissal of such charges absent early compliance will only spotlight for employees the disability created by the Communist character of their leadership.

While the Board's reading of Section 9 (h) does not, therefore, really afford Communist-led unions the benefits of the Act, the construction of Section 9 (h) adopted by the court below, by its imposition of a six-months limitation period for achieving

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[35] *National Labor Relations Board* v. *Highland Park Manufacturing Co.*, 341 U. S. 322, 325.

compliance, might have the effect of preventing unions which are devoid of any Communist taint and which have a history of compliance with the filing provisions from bringing meritorious cases before the Board. The complexity and shifting nature of the operational and organizational matters which must be treated in the documents required by Section 9 (f), (g), and (h) present problems of compliance for all unions, and not merely for those whose leaders are Communists. It is not surprising, then, that Board experience has shown that the compliance status of most unions, including those whose leadership is completely free from any suspicion of disloyalty, fluctuates greatly throughout the year.[36] Election of new officers, other shifts of official personnel, changes in organizational structure, difficulties and delays in auditing financial statements or in obtaining information with respect to the many details which Section 9 (f) and (g) require, may make compliance at any given moment, or continuous compliance, a most difficult and sometimes an impossible task. This fluctuating character of a union's compliance status is illustrated by two tables set forth in Appendix "A", pp. 61-62, to this brief, based upon the records of the Board's Affidavit Compliance Branch. Table I shows that the number of unions which lapse from compliance from month to month ranges from a low of 7,931 to a high of 13,825. Table II shows that

[36] All of the major national and international labor organizations have now complied with the exception of the International Typographical Union and the United Mine Workers of America.

unions normally drop out of compliance for one reason or another as often as five times a year.

While lapses from compliance are thus normal among all unions for reasons wholly divorced from communism in their leadership or from any desire to avoid compliance, there are some unions and situations in which compliance status may be particularly difficult to maintain. This is true, for example, in cases where industry-wide bargaining is conducted by an international on behalf of employees belonging to numerous locals.[37] In such cases the Board requires compliance by all local unions within the bargaining unit as well as by their international which acts as employee negotiator for the entire unit. *Cuffman Lumber Co.*, 82 NLRB 296. The task in such cases of bringing all necessary locals as well as the international into compliance at one time, in view of the variables, some uncontrollable, at work in matters to which Section 9 (f), (g) and (h) relate, may require careful planning, an unhurried coordinaton of local union actions, and even some good luck as well.[38]

A similar situation exists with respect to a great

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[37] Instances of this practice are to be found among insurance companies, nationwide bakery chains, and the communications industries. See, *e.g.*, *John Hancock Mutual Life Insurance Co.*, 93 NLRB 778; *Associated Press*, 61 NLRB 574; *West Coast Telephone Co.*, 66 NLRB 1073; *Shipowners' Association of the Pacific Coast*, 7 NLRB 1002.

[38] See the Board's *Summary of Section 9(h) Problems*, printed in Report of Senate Subcommittee on Labor and Labor-Management Relations, entitled "Communist Domination of Certain Unions," Part III, 82nd Cong., 2nd Sess. (1952), p. 6, fn. 21.

number of loosely organized small unions, both independents and affiliates of internationals throughout the country. The complex (at least to them) character of the filing requirements may discourage attempts to achieve compliance status among such unions, although they have no problem of Communist leadership, unless there is a specific need to use the Board's facilities. Gathering the information required by the filing provisions may be time-consuming, particularly where the union's administration is neither a full-time operation nor, perhaps, an efficient one. As Professor Slichter recently observed (31 LRR 5, 11), "unions are loose organizations," particularly at the lower levels of union organization.[39]

In these cases where compliance is especially difficult, as well as in the normal case where compliance may be of uncertain duration, it is not always feasible or possible to file timely charges during a period of full compliance. Although the Act permits six months following the commission of an unfair labor practice in which to file a charge, as a practical matter the period may often be much shorter. For normally, of course, relationships between employers and employees, even as to possible unfair labor practices, are handled through negotiation and adjustment, not through litigation before the Board.[40] Indeed, the filing of a charge may provide an irritant that forecloses or endan-

[39] See also, Taft, *Understanding Union Administration*, 24 Harv. Bus. Rev. No. 2, p. 254; Neufeld, *The House of Labor* (Prentice-Hall, 1951), pp. 20-21.

[40] See Mamet, *The Role of the Labor Lawyer in Labor Relations*, 3 Labor Law Journal 200, at pp. 201-202, 207 (March 1952).

gers informal settlement. For these reasons, the propitious moment for the filing of a charge cannot always be tailored to fit into a period when neither full compliance nor the six-month limitation has expired. Accordingly, in such cases the requirement which respondent would impose by its reading of the Act would frustrate the Act's co-ordinate purpose of remedying unfair labor practices committed against unions which do not have Communist leadership and are willing to comply. The Board's reading, on the other hand, which permits charges to be filed by noncomplying unions, preserves cases for litigation upon the effecting of compliance within a reasonable period. See pp. 53-55, *infra*. We believe that this result adheres to the legislative intent, not only because it avoids penalizing unions whose opposition to Communism is unquestioned, but also because the additional penalty imposed by respondent's contention in no apparent way further advances the cause of encouraging employees to elect non-Communist officers.

IV

The Construction of Section 9(h) Made Contemporaneously With Its Enactment by the Agency Responsible for Its Implementation and Administration Should Be Judicially Approved Unless Plainly Erroneous

When the 1947 amendments to the Act were passed by Congress, the filing provisions of Section 9 (f), (g), and (h) confronted the Board with a myriad of problems of interpretation and implementation that required immediate solution if the legislative will was to be put into effect. Many

hundreds of representation and unfair labor practice cases were pending before the Board, and additional hundreds of petitions and charges postdating the effective date of the amendments could fairly be anticipated. National Labor Relations Board, Thirteenth Annual Report (1948), p. 11. If these cases were to be handled responsibly, as the Act contemplated, it was essential that the Board not only make early determinations respecting the impact of Section 9 (f), (g), and (h) on them, but, perhaps more importantly, that the Board at once establish appropriate machinery to permit the filing provisions to function. Procedures had to be devised to receive and maintain vast numbers of the 9 (h) loyalty affidavits which would be submitted by labor organizations in every part of the United States. Methods had to be adopted for assuring that the proper union officials filed the affidavits, that the jurat was properly executed, and that the necessary forms were made available. It was essential that a system be adopted for checking the compliance status of unions for possible lapses at the stages of Board proceedings made critical by the filing provisions of the Act, and for controlling the steps being taken on a case by Board personnel in accordance with current compliance status.

The problems relating to the administration of the filing requirements with respect to operational and financial data were similarly complex. For example, the functions of the Secretary of Labor provided for by Section 9 (f) and (g) had to be

coordinated with the Board actions made subject to filing of the specified documents with the Department of Labor. Procedures also had to be established for assuring that unions had furnished their members with financial reports, as provided by Section 9 (f) (B) (2).

Fundamental to these and many other administrative tasks which required completion before the Board could properly administer the filing provisions of the Act, was the ascertaining of the time, with respect to the appropriate Board proceedings, that the reports and affidavits had to be on file. This determination, which respondent now claims the Board made incorrectly, was an integral part of the initial establishment by the Board of the machinery for administration of the filing provisions. Accordingly, the then General Counsel of the Board, contemporaneously with the effective date of the 1947 amendments, notified the agency personnel who were responsible for handling compliance matters both in the regional offices and in Washington that "compliance with Section 9 (f), (g), and (h) is a condition precedent to either processing a 9 (e) (1) (A) petition, entertaining a 9 (e) (1) petition or issuing a complaint. It is *not* a bar to *receiving* a petition or a charge * * *."[41] The Board's construction reflected its

[41] Memorandum of August 19, 1947, from General Counsel of the Board to the Board's staff personnel. This memorandum, which is reprinted in Appendix B, p. 63, *infra*, illustrates the administrative problems that arose in the initial establishment of procedures necessary for the filing provisions to function, and the manner in which they were solved. Further docu-

spontaneous understanding of the plain meaning of the statutory language; there is no suggestion that anyone supposed at that time that Section 9 (h) could be read differently. Accordingly, the many thousands of unfair labor practice charges filed by labor organizations since the effective date of the 1947 amendments have been received whether or not the charging union had complied at that time, although compliance was made prerequisite to the issuance of a complaint in every case.[42]

Consonant with the Board's reading of the filing provisions, it was essential for purposes of administrative efficiency to adopt special procedures for handling petitions in representation cases and charges in unfair labor practice cases filed by noncomplying unions. Clearly it would not effectuate the policies of the Act to investigate representation questions on the basis of stale petitions, or to investigate the allegations of charges where there was no reason to believe that compliance would be achieved in order to permit the issuing of a complaint. Accordingly, it was determined that a ten-day period would be granted in all such cases following the filing of the petitions or charge, after

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mentation relating to the nature of the filing provisions in their administrative aspect may be found in the Board's *Summary of Section 9(h) Problems*, cited in n. 38, p. 49, *supra*.

[42] See the General Counsel's testimony before the Joint Committee, cited p. 37, *supra*. Board decisions reflecting this consistent ruling include, in addition to those cited in n. 5, p. 10, *supra*, *Edward Brothers, Inc.*, 95 NLRB 1451; *I. B. S. Mfg. Co.*, 96 NLRB 1263; *American Bottling Co.*, 99 NLRB No. 59; *Rubin Bros. Footwear*, 99 NLRB, No. 100.

which the proceeding would be dismissed.[43] This rule was qualified, however, by allowing a charging union to make a showing that it was making diligent efforts to come into compliance, in which case reasonable extensions of time might be granted.[44] These administrative rulings are reflected in the Board's Rules and Regulations and Statement of Procedure, 29 C. F. R., Secs. 102.13 and 101.3.

In the *Nina Dye Works* case, *supra*, the Third Circuit states (198 F. 2d at 364), that the Board's Rules and Regulations are "directly contrary" to the Board's construction of Section 9 (h) because they define compliance with that Section to require an affidavit "executed contemporaneously with the charge" (Board's Rules and Regulations, 6th Series, Sec. 102.13 (b) (2), 29 C. F. R. Sec. 102.13 (b) (2)). What the court overlooks, however, is that this definition was expressly limited to apply "for the purpose of these rules and regulations" (*ibid.*), and did not purport to construe the meaning of the statutory language. The reason for this definition, as we have indicated, was to encourage early compliance and avoid useless preliminary in-

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[43] Memorandum from General Counsel to staff, p. 63, *infra*. The Board's ten-day rule was observed in this case, even though compliance by the parent federation of the charging union did not occur until more than four months after the charge was filed. For, as the statute was understood by the Board when this case arose, compliance by the parent federation was not required by Section 9(h), and the ten-day rule was applied accordingly. See *Northern Virginia Broadcasters, Inc.*, 75 NLRB 11. Thus, the Board was without authority to issue the complaint in this case only if, as respondent argues, Section 9(h) requires compliance at the time the charge is filed.

[44] Board's *Summary of Section 9(h) Problems*, cited in n. 38, p. 49, *supra*.

vestigation of charges which are never to result in prosecutions by issuance of complaints.[45]. However, as the Board has made clear in its Statement of Procedure, a ten-day grace period, which may be extended upon a proper showing, is given to charging unions to achieve compliance status. 29 C. F. R. Sec. 101.3. That the meaning we have stated is given by the Board to Section 102.13 (b) (2) of its Rules and Regulations is further evidenced by its consistent decisions on this question. See cases cited in footnotes 5 and 42, pp. 10, and 54 *supra*. And, of course, the Board's construction of its own Rules and Regulations is normally to be given controlling weight. *National Labor Relations Board* v. *Capitol Greyhound Lines*, 140 F. 2d 754, 759 (C. A. 6), certiorari denied, 322 U. S. 763; *National Labor Relations Board* v. *Popper, Inc.*, 113 F. 2d 602, 603-604 (C. A. 3); cf. *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410, 414.

In sum, we have shown here that the Board's reading of Section 9 (h) was adopted contemporaneously with the effective date of that section as a part of the many rulings and their implementations which were essential to efficient functioning and administration of technical and procedural legislative provisions. The statutory language di-

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[45] For the same reason, Section 102.52 of the Rules and Regulations calls for compliance at the time of the filing of a petition under Section 9(c) of the Act in a representation case, although the Act plainly makes compliance in such a case necessary only as a prerequisite to an investigation. See also, Sec. 101.16 of Statement of Procedure, pp. 85-86, *infra*.

recting the Board to administer these provisions was highly specialized in its references to the Board procedures which were involved. The Board has carefully implemented that language, as it understood it, with an elaborate administrative structure which has proved an effective system for putting the statutory scheme into operation. Under these circumstances, the Board's reading of Section 9 (h) should be given "peculiar weight [for] it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315. See also, *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534, 549; *Fishgold* v. *Sullivan Corp.*, 328 U. S. 275, 290; *Bailey* v. *Richardson*, 182 F. 2d 46, 52 (C. A. D. C.), affirmed by an equally divided Court, 341 U. S. 918; *Gillarde* v. *Martinelli*, 169 F. 2d 60, 61 (C. A. 1); Davis, *Administrative Law* (West Pub. Co., 1951), pp. 203-204. This is particularly true here, where respondent's reading of Section 9 (h) depends on an ambiguity it would create in the statutory language by not limiting the "unless" clause of that Section to its grammatical function of modifying the phrase "no complaint."[46] See pp. 12-16, *supra*. Compare the Fifth Circuit's opinion in

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[46] See, *National Lead Co.* v. *United States*, 252 U. S. 140, 145-146; *Brewster* v. *Gage*, 280 U. S. 327, 336; *Danz* v. *Reconstruction Finance Corporation*, 193 F. 2d 1010, 1016 (E. C. A.)

the *American Thread* case, 198 F. 2d at 138. The Board's construction, on the other hand, eliminates this ambiguity, and as we have shown, permits an efficient handling of the filing provisions without affording statutory benefits to Communist-led unions. We respectfully submit, therefore, that the Board's reading should commend itself to judicial approval.

V

The Issue in This Case Is Not Controlled by This Court's Decision in the *Highland Park* case

The court below apparently rests its decision upon the opinion of this Court in *National Labor Relations Board* v. *Highland Park Manufacturing Co.*, 341 U. S. 322 (R. 589). In *Highland Park*, this Court held that the C.I.O. was a "national or international labor organization" within the meaning of Section 9 (h), and for that reason was required to file non-Communist affidavits as a prerequisite to the achievement of full compliance status by its affiliates. The wholly separate question presented here, which relates to the stage of an unfair labor practice proceeding at which Section 9 (h) requires compliance, was not before the Court in *Highland Park*. For in that case, unlike here, the CIO's compliance with Section 9 (h) occurred *after* the complaint had issued,[47] and the

[47] As the Board's decision reveals (*Highland Park Manufacturing Co.*, 84 NLRB 744, 749), the complaint was issued on January 10, 1949, twelve months before the CIO's compliance. Similarly, in all the other cases relied on by the court below (R. 589), the federation compliance occurred after the complaint had issued. See the Board's decision in *Postex Cotton*

Board did not even suggest, as its consistent rulings and practice make clear (*supra*, pp. 10, 53-54), that the obligation of Section 9 (h) was geared to any procedural step other than the complaint. There is, moreover, no indication from the manner in which the *Highland Park* case was presented to the Court that the Court was even made aware of the problem of the present case.

Consequently, we read the statement in the opinion—"While the C.I.O. officers have since filed the affidavits, they were not on file at any time relevant to this proceeding" (314 U. S. at 325)—as meaning only that a *complaint* which has been issued at a time when the charging union was not in compliance is not validated retroactively by subsequent compliance. For the same reason, we think that this Court was not addressing itself to the question now presented in its further statement that "The Board is a statutory agency, and, when it is forbidden to investigate or entertain complaints in certain circumstances, its final order could hardly be valid" (*ibid.*). Moreover, as other portions of the opinion seem to show by their context, the Court appeared to use the word "entertain," with respect to complaints, in the technical sense of "issue." See 341 U. S. at 324. In short, we think the Court did not intend in the *Highland Park* case to decide this case either directly or by implication.[48]

Mill, Inc., 80 NLRB 1187, 1189; *J. I. Case Company, Bettendorf Works*, 89 NLRB 269; *Clark Shoe Company*, 88 NLRB 989, 991.

[48] Cf. *Armour & Co.* v. *Wantock*, 323 U. S. 126, 132-133.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed, and the case remanded to the Court of Appeals for further hearing on the Board's petition for enforcement.

ROBERT L. STERN,
Acting Solicitor General.

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DAVID P. FINDLING,
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MOZART G. RATNER,
Assistant General Counsel,
DUANE BEESON,
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National Labor Relations Board.

November, 1952.

APPENDIX A

TABLE I—Over-all Experience of Labor Unions with Compliance with Section 9 (f), (g) and (h) for One Year Beginning July, 1951.

[Source: Official Records of Affidavit Compliance Branch, General Counsel's Office, National Labor Relations Board]

Month and Year	Local Unions In Compliance (Number of Unions)	Local Unions Lapsed from Compliance (Number of Unions)
July 31, 1951	12,931	9,386
August 31, 1951	13,898	8,638
September 30, 1951	14,404	8,367
October 31, 1951	14,368	8,048
November 30, 1951	15,074	7,931
December 31, 1951	14,066	9,060
January 31, 1952	9,220	13,825
February 29, 1952	10,969	11,784
March 31, 1952	11,963	11,224
April 30, 1952	13,403	10,255
May 31, 1952	14,121	9,752
June 30, 1952	13,465	10,752

TABLE II—Experience of Nine Representative Unions with Compliance with Section 9 (f), (g) and (h) During Calendar Years 1950 and 1951.

[Source: Official records of Affidavit Compliance Branch, General Counsel's Office, National Labor Relations Board]

	9 (h)		9 (f) and (g)		
	In Compliance	Compliance Expiration date	In Compliance	Compliance Expiration date	Compliance Lapsed
Union A		1- 2-50			
	1-13-50	1-17-50	12-20-49	3-31-50	1- 2-50 to 1-13-50-9 (h)
	1-16-50	1- 2-51	2- 7-50	12-31-50	1- 2-51 to 2-20-51-9 (h)
	2-20-51	1- 7-52	2-20-51	3-31-51	12-31-50 to 2-20-51-9 (g)
			3-26-51	12-31-51	
Union B			1- 1-50	3-31-50	6-30-50 to 7- 5-50-9 (h)
	7- 5-50	6-30-50	3-14-50	12-31-50	6- 1-51 to 6- 5-51-9 (h)
	6- 5-51	6- 1-51	12- 8-50	3-31-51	12-13-51 to 1 -4-52-9 (h)
	10-22-51	10-24-51	3-16-51	12-31-51	12-31-51 to 1- 4-52-9 (g)
		12-13-51			
Union C	10-17-49		10-17-49		
	9- 7-50	6-30-50	9- 7-50	6-30-50	6-30-50 to 9- 7-50-9 (g) & (h)
	8-14-51	6-30-51	8-14-51	6-30-51	6-30-51 to 8-14-51-9 (g) & (h)
		6-30-52		6-30-52	

TABLE II—EXPERIENCE OF NINE REPRESENTATIVE UNIONS WITH COMPLIANCE WITH SECTION 9 (f), (g) AND (h) DURING CALENDAR YEARS 1950 AND 1951.—Continued.

[Source: Official records of Affidavit Compliance Branch, General Counsel's Office, National Labor Relations Board]

	9 (h)		9 (f) and (g)		
	In Compliance	Compliance Expiration date	In Compliance	Compliance Expiration date	Compliance Lapsed
Union D	4- 1-49				12-31-49 to 3-14-50-9 (g)
	3-14-50	1- 1-50	3-14-50	3-31-50	1- 1-50 to 3-14-50-9 (h)
			3-21-50	12-31-50	12-31-50 to 1-25-51-9 (g)
	1-25-51	1- 1-51	1-25-51	3-31-51	1- 1-51 to 1-25-51-9 (h)
		12-31-51	3- 1-51	12-31-51	12-31-51 to 2- 8-52-9 (g)
Union E	10-31-49		11-23-49		
	10- 4-50	10-10-50	2-21-50	2-28-50	12- 7-50 to 12-15-50-9 (h)
	10- 9-50	10-24-50	11- 2-50	11-30-50	
	12-15-50	12- 6-50	12-20-50		
	10-19-51	9-15-51	11-19-51	2-28-51	9-17-51 to 10-19-51-9 (h)
		9-14-52	12-28-51	11-30-51	
				2-28-52	
				11-30-52	
Union F	10-27-49		12- 8-49		
	11-14-50	10-18-50	2-14-50	3-31-50	10-19-50 to 11-14-50-9 (h)
				12-31-50	
	12- 3-51	10-28-51	1- 2-51	3-31-51	10-19-51 to 12- 3-51-9 (h)
		10-31-52	1-29-51	12-31-51	
Union G	1- 5-50	12-21-50	1- 5-50	12-31-50	1- 1-50 to 1- 4-50-9 (g) & (h)
	1- 2-51	1- 2-52	1- 2-51	12-31-51	12-22-50 to 1- 1-51-9 (h)
Union H	7- 8-49		10-13-49		
	1-23-50	1- 9-50	10- 2-50	9-30-50	1-10-50 to 1-22-50-9 (h)
					10- 1-50 to 10- 2-50-9 (g)
	1-25-51	1-17-51	10- 9-51	9-30-51	1-18-51 to 1-24-51-9 (h)
		1- 7-52		9-30-52	
Union I	4-11-49		12- 2-49		
	3-16-50	1-14-50	3-23-50	3-31-50	1-14-50 to 3-16-50-9 (h)
				12-31-50	12-31-50 to 1-30-51-9 (g)
	4-20-51	1-13-51	1-30-51	3-31-51	1-13-51 to 4-20-51-9 (h)
		1-12-52	2-14-51	12-31-51	

Union A—District Lodge No. 49, Machinists, AFL
Union B—Local 2058—Steelworkers, CIO
Union C—Local 2606—Carpenters, AFL
Union D—Lodge 1183—Machinists, AFL
Union E—Int'l. Alliance Bill Posters, Billers & Distributors, AFL
Union F—United Assoc. of Office, Sales & Technical Employees, Ind.
Union G—Lodge 1898, Machinists, AFL
Union H—Local 385—Meat Cutters, AFL
Union I—Local 111—Bakery, AFL

APPENDIX B

G. C. (Field) No. 2.
August 19, 1947.

To: The Staff.
From: The General Counsel.
Subject: Instruction regarding compliance with Department of Labor registration requirements and submission of loyalty affidavits (Subsections 9 (f) (g) and (h)).
Attachments: (a) Affidavit form NLRB 1080.
(b) Affidavit form NLRB 1081.
(c) Affidavit Record Card NLRB 1082.
(d) Instructions to Unions NLRB 1083.

INTRODUCTION

Compliance with Section 9 (f), (g) and (h) is a condition precedent to either processing a 9 (c) (1) (A) petition, *entertaining* a 9 (e) (1) petition or issuing a complaint. It is *not* a bar to *receiving* a petition or a charge but, to prevent accumulations of petitions and charges on which no action may be taken until eligibility is established, a limited period for compliance has been set. In every such instance, the petitioning or charging union will be notified at the time of filing, that it will be allowed *not to exceed 10 days* in which to complete its eligibility. This will be the limit unless further time is authorized by Washington. Such authorization will be given only for good reason shown. Without such authorization, the petition or charge must be dismissed at the expiration of 10 days and the case closed.

The files of statements required in Section 9 (f) and (g) will be kept at the Department of Labor office for the registration of labor organizations in Washington. Certificates showing compliance with Section 9 (f) and (g) will be issued by that department to the local or other union only when requested by such union. The regional offices of the NLRB will not initiate such requests; they may, however, request the Washington office to ascertain filing information from the Labor Department. You will note on the original petition or charge, the compliance number and its expiration date, both of which will appear on the face of the certificate.

The file of non-communist affidavits will be kept at the National Labor Relations Board in Washington, but each regional office will maintain a file of affidavit record cards containing the data that pertains to the qualified labor organizations in their region. It is contemplated that most of the non-communist affidavits will be filed with the regional offices. When this occurs, the regional office will abstract the information to their affidavit record cards and forward the original affidavits to Washington. (Refer to statement of procedure, forms, etc.)

Since the mere filing of affidavits by a local is not sufficient, Washington will keep all regions advised when affidavits have been received from the American Federation of Labor, Congress of Industrial Organizations and any other similar central organizations and also from each of the National or International Unions, so that your abstract cards may show the chain of qualification down to the local. If the AF of L, CIO or other such organiza-

tion, or if the parent International should fail to qualify, all subordinate organizations are disqualified.

In maintaining the affidavit record cards, great care must be exercised to see that none of the qualifications have expired. An affidavit is good for only one year.

If your affidavit record cards indicate disqualification, it will be safer to check with Washington before taking action.

When affidavits of a local are filed direct with Washington, the abstracted information will be forwarded to you promptly.

These registrations are all absolute conditions precedent to our jurisdiction. They must be accurately checked in every instance.

If an affidavit is filed with you in defective form, do not accept it but return for correction.

The term "officers" shall include all persons described as "officers" in the International, National and/or local constitutions and by-laws.

It is suggested that you obtain, if possible, copies of the constitutions, retaining one for your use and forwarding one copy to Washington. You will see that these are complete and that with this affidavit, *all* the affidavits of the officers listed are filed. The affidavits *must be sworn to before a Notary Public.* Officials of the Board will not administer these oaths unless they are Notaries Public and have a seal.

Compliance With Labor Department Registration Requirements

Legal Requirement. Subsections 9 (f), and 9 (g) of the Act as amended requires that a labor

organization file information with the Department of Labor before the Board may take any affirmative action in behalf of such organization. Further information regarding the interpretation of Subsections 9 (f) and (g) is being issued in other instructional material.

Compliance Procedure. Arrangements have been worked out with the Department of Labor whereby unions complying with Subsections 9 (f) and 9 (g) are furnished with a letter indicating compliance with these provisions and providing the union with a compliance number as evidence of compliance. Unions filing petitions or charges with the Board are required to show on the petition or charge form the compliance number and its date of expiration.

Unions wishing to furnish the Board with evidence of compliance with the registration requirements either after a charge or petition has been submitted or desiring to furnish such evidence separate from a charge or petition, are required to include the name of the union, the compliance number, and the date of expiration of the compliance in affidavit form sworn to before a notary public or Board Agent by a responsible union official. This procedure will be necessary when a previous compliance number has expired while a case is in process or when a union wishes to record its compliance with the Board after a case has been placed on file without evidence of compliance.

Validity of Evidence of Compliance. Field offices are to accept sworn affidavits of compliance with Subsections 9 (f) or 9 (g) (either submitted separately or included as part of the charge or petition) as sufficient evidence of compliance to

warrant investigation and final action in any case. Processing of a case should be discontinued only when compliance expires or information is received either from the General Counsel's Office, the Department of Labor, or the Department of Justice that evidence of compliance is false.

FILING LOYALTY AFFIDAVITS

Legal Requirements. Subsection 9 (h) of the Act as amended requires that before the Board may investigate a petition under Subsection 9 (c) or entertain a petition under Subsection 9 (e) or issue a complaint based on the charge of a labor organization there must be on file with the Board "an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods." Further information regarding the interpretation of Subsection 9 (h) is being issued in other instructional material.

Affidavit Forms. Unions desiring to comply with Subsection 9 (h) are to file affidavit form NLRB 1080 certifying as to the names of the officers of the union. Each officer named in NLRB 1080 is to complete affidavit form NLRB 1081. Affidavit forms NLRB 1081 for the officers of a union should

be accompanied by an NLRB 1080 form whenever submitted.

Where Unions File. Local unions are to file affidavit forms NLRB 1080 and 1081 with the Regional or Sub-Regional Office which would normally act on its cases. A local union filing cases in more than one office need file with one office only. In such instance, the union should request that the office with which it has filed inform the other office of its compliance with this Subsection.

All national, international, and parent labor organizations (AFL, CIO, etc.) should file affidavit forms with the Washington Office of the Board.

When Unions File. Initially unions will probably file loyalty affidavit forms at the time a charge or petition is filed, but once an officer has filed an affidavit such affidavit need not be renewed for 1 year. (The 1-year period is calculated from the date of execution of the affidavit). There are a number of circumstances when during the course of processing a case, it is necessary for a union to file a new form NLRB 1080 alone or accompanied by one or more NLRB 1081 forms as the situation requires, to permit completion of action on the case. New affidavit forms must be filed under the following circumstances:

1. The 1-year period during which the affidavits are valid expires.

   In this case a new NLRB 1080 form and a new NLRB 1081 form for each officer must be executed and filed.

2. The term of office of one or more of the officers of the union expires but all officers are reelected to

a new term so that there is no change in officers of the union.

A new form NLRB 1080 must be filed showing the expiration dates of the new terms of office being served by the officials. New NLRB 1081 forms are unnecessary since the previous ones are valid for the balance of the 1-year period.

3. A union officer is succeeded by a new officer.

In this case, a new NLRB 1080 and an NLRB 1081 for each officer for whom there is not a valid NLRB 1081 on file with the Board must be executed and filed with the Board.

CONTROL PROCEDURES—FIELD OFFICES

Review of Affidavit Forms.—When the loyalty affidavit forms for a union are received by a Regional Office they should be reviewed with the following factors in mind:

1. Are all items of information furnished which are required by the forms?
2. Are the forms properly notarized?
3. Have any of the expiration dates already expired?
4. Is there an NLRB 1081 for each officer whose name is listed on the NLRB 1080 or do Regional Office records show that for each officer who has not submitted an NLRB 1081 at this time there is a valid form on file with the Board?

Upon completion of review of such forms, the person responsible in the Regional Office should (a) make necessary recordings in the field office

affidavit record file, (b) staple the NLRB 1081 forms to the NLRB 1080, (c) write in the lower right hand corner of form NLRB 1080 the region number and the earliest date at which a new NLRB 1080 will be required (see section above "When Unions File"), (d) initial the NLRB 1080 in the lower right hand corner, and (e) forward the complete set of forms to the Washington Office via registered mail.

Preparation of Affidavit Record Card, NLRB 1082. An NLRB 1082 form will be prepared by the Regional or Sub-Regional Office at the time the union files its first petition or charge or submits loyalty affidavits required for compliance with Section 9 (h) of the Act as amended. Once such a form is prepared its use is continued although additional petitions and charges have been filed, or revised loyalty affidavits submitted.

Information for entry on this form is provided as follows:

1. Secure from the charge or petition the Department of Labor Compliance number, expiration date of compliance number, name of national or international and name of parent organization (AFL, CIO, etc.).

2. Secure from the NLRB 1080 form the names of the local union officers, and the expiration dates for their terms of office.

3. Secure the expiration date for each individual officer's affidavit by reference to his NLRB 1081. (This date is 1 year from the date of execution of the affidavit.)

4. The "renewed" boxes on NLRB 1082 are for

insertion of information at a later date showing changes since the previous submission.

5. Of paramount importance in the operation of this record is the box entitled "Earliest Expiration Date." This date is determined by comparing all of the "expiration dates" shown on both sides of the card (including dates of expiration of term of office, compliance number, and loyalty affidavits) and selecting the one which will be reached first.

6. The case number of all "active" cases in which the local union is involved is recorded in the "Case Number" box.

Notification of Other Field Offices. If a union files the necessary forms for compliance with Subsection 9 (h) and indicates that it wishes other field offices notified of such compliance in order that cases filed by the union might be processed by such offices, the office with which the necessary forms have been filed should proceed as follows:

1. Enter on a copy of NLRB 1082 for each office to be notified all information required thereon which is available from the NLRB 1080 and 1081 forms.

2. Have the Regional Director or Examiner-in-Charge certify on the bottom of the affidavit record card that it is a true record of compliance with Subsection 9 (h).

3. Forward by registered mail to the field offices to be notified the certified copy of the affidavit record card.

Maintenance of NLRB 1082 Forms. There are to be two files of affidavit record cards in each field

fice, one file for unions having active cases (i.e., ppropriate certification or issuance of complaint each case has not been made) and one file for nions who do not have "active" cases. Both files e to be kept in alphabetic sequence by name of rent organization (AFL, CIO, etc.) and national international and numerically by local union mber within national or international. If local nions do not have numbers their cards should be ed alphabetically. The system of alphabetization ould be the one used in the *Directory of Labor nions in the United States,* U.S. Department of bor Bulletin No. 901 (May, 1947) a copy of ich is being furnished each field office.

The "active" cards are to be filed in visible record s and a tab is to be placed over the position on card for the *month* of the earliest expiration te. Two distinct colors should be used for tabs, ch color for alternate months. For example, for January expiration dates use a black tab, Febru- y a red tab, March a black tab, April a red tab, c.

In setting up the initial file of these forms plenty space should be left for expansion so as to reduce e amount of shifting of records which might herwise prove to be necessary.

Whenever a complaint case is closed, a certifica- n of bargaining representatives is made, or cer- ication made under Section 9 (c), such fact is dicated by crossing off the case number on the rd. Whenever all case numbers on a card are ossed out or whenever compliance with Subsec- ns 9 (f), (g), and (h) expire the card should be thdrawn from the "active" file and placed in

the "inactive" file. The "inactive" cards are to be filed in regular vertical file drawers.

Checking Charges and Petitions for Compliance with Subsections 9 (f), (g) and (h). All incoming petitions and charges must be checked for compliance with Subsections 9 (f), (g) and (h). This involves two steps as follows:

(a) Checking the Affidavit record cards when completed to see that the local union is in compliance with Subsections 9(h) and that the local, national, international and parent organizations are in compliance with Subsections 9 (f) and (g).

(b) Checking the distribution list from Washington to see that the national, international and parent organizations are in compliance with Subsections 9 (h). (See below *Distribution of Records on Nationals, Internationals and Parent Labor Organizations (AFL, CIO, etc.)).*

When this check is made and it is clear that the requirements of Subsections 9 (f) (g) and (h) are met, the clerk in charge of such work should initial the petition or charge after "9 (f) (g) and (h) cleared" in the box entitled "Do not write in this space."

Follow-up on "Earliest Expiration Dates." On the first day of each month the clerk responsible for the affidavit record files in the field office is to withdraw those cards from the "active" file in which the earliest expiration date is during the following month. (That is, on September 1 the cards having expiration dates before October 31, will be examined.) The withdrawal of these cards will be

facilitated by reference to the tabs. These cards will be arranged in order of earliest expiration date, and the union affected notified by form letter of the circumstances. If the expiration date arrives without appropriate renewal the field office staff member to whom the case has been assigned will be instructed to cease activity on the case as of the expiration date until notice of renewed compliance is received. If the case has been transferred to Washington, the Office of the General Counsel will be notified by a teletype showing the name of the union and the case number.

WASHINGTON OFFICE RECORDS

Distribution of Records on Nationals, Internationals, and Parent Labor Organizations (AFL, CIO, etc.). The officers of National, International and parent labor organizations are required to file affidavit forms NLRB 1080 and 1081 with the Administrative Division in the Washington Office of the Board. The Administrative Division maintains a record of such affidavits and prepares periodic reports to field offices showing the names of the labor organizations which have complied with the provisions of Subsection 9 (h). Field offices are notified immediately by teletype of any change in the compliance status of such a union organization. It is the responsibility of field office directors to keep his staff members handling cases informed of the compliance status of national, international, and parent labor organizations with which each local union having cases on file is affiliated.

Maintenance of Affidavit Files. It is the responsibility of the Administrative Division to re-

ceive and maintain for ready reference all affidavit forms NLRB 1080 and 1081 filed either in the field or in Washington. A separate manila folder is established for each labor organization endeavoring to comply with Subsection 9 (h). The NLRB 1080 affidavits are fastened to the left side and the NLRB 1081 affidavits are attached to the right side of such folders. These folders are kept in a locked file room and are arranged in alphabetic sequence by title of parent organization and national and international, and in numerical sequence within national and international. Local unions not having a number will be filed in alphabetic sequence.

Maintenance of Reference Records. In addition to the affidavit files the Administrative Division prepares and keeps up to date a flexoline record showing the earliest expiration date of affidavits filed by unions complying with Subsection 9 (h) of the Act. These strips are to be arranged in the same sequence as the affidavit files, and are to show the name and number of the labor organization, the office in which the affidavits were originally filed and the earliest expiration date.

Availability of Information. Members of the general public desiring information as to whether a union has complied with Subsection 9 (h) of the Act should contact the Information Division. This office will contact the Administrative Division to secure the necessary information. Normally information as to whether a specific person has signed such an affidavit will not be disclosed.

APPENDIX C

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*), are as follows:

SEC. 3. * * *

* * * * *

(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

* * * * *

SEC. 9. * * *

* * * * *

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining

and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

* * * * *

(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such em-

ployees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

* * * * *

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and

allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms; (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disburse-

ments made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section

10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

* * * * *

SEC. 10. * * *

* * * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided,* That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such

charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. * * *

* * * * *

(e) * * *. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

The relevant provisions of the Rules and Regulations and Statements of Procedure of the National Labor Relations Board are as follows:

SEC. 102.13. * * *

* * * * *

(b) For the purpose of these rules and regulations, compliance with section 9 (h) of the Act means in the case of a national or international labor organization, that it has filed with the general counsel in Washington, D. C., and in the case of a local labor organization, that any national or international labor organization of which it is an affiliate or constituent body has filed with the general counsel in Washington, D. C., and that the labor organization has filed with the regional director in the region in which the proceeding is pending:

(1) A declaration by an authorized representative of the labor organization, executed contemporaneously with the charge (or petition) or within the preceding 12-month period, listing the titles of all offices of the filing organization and stating the name of the incumbent, if any, in each such office and the date of expiration of each incumbent's term.

(2) An affidavit by each officer referred to in subparagraph (1) of this paragraph, executed contemporaneously with the charge (or petition) or within the preceding 12-month period, stating that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

* * * * *

SEC. 102.52. *Petition for certification or decertification; who may file; where to file; withdrawal.*—A petition for investigation of a question concerning representation of employees under paragraphs (1) (A) (i) and (1) (B) of section 9 (c) of the act hereinafter called a petition for certification may be filed by an employee or group of employees or any individual or labor organization acting in their behalf or by an employer. A petition under paragraph (1) (A) (ii) of section 9 (c) of the act, alleging that the individual or labor or-

ganization which has been certified or is being currently recognized as the bargaining representative is no longer such representative (hereinafter called a petition for decertification), may be filed by any employee or group of employees or any individual or labor organization acting in their behalf. When any such petition is filed by a labor organization, no investigation shall be made of any question of representation raised by such labor organization unless such labor organization is in compliance with the requirements of section 9 (f), (g), and (h) of the act, within the meaning of section 102.13. * * *

* * * * *

Statement of Procedure:

* * * * *

SEC. 101.3 *Compliance with section 9 (f), (g), (h) of the act.*—(a) If a charge (or petition) is filed by a labor organization, that labor organization and every national or international labor organization of which it is an affiliate or constituent unit must have complied with section 9 (f) (b) (2) of the act. At the time of filing the charge (or petition) or prior thereto, or within a reasonable period of time thereafter not to exceed 10 days, the labor organization must present the duplicate copy of a letter from the United States Department of Labor showing that it has filed the material required under section 9 (f) and (g) of the act and a declaration executed by an authorized agent stating the labor organization has complied with section 9 (f) (b) (2) and setting

forth the method by which compliance was made.

(b) In addition, the labor organization and every national or international labor organization of which it is an affiliate or constituent unit must have complied with section 9 (h) of the act as follows: At the time of filing the charge (or petition) or prior thereto, or within a reasonable period not to exceed 10 days thereafter, the national or international labor organization shall have on file with the general counsel in Washington, D. C., and the local labor organization shall have on file with the regional director in the region in which the proceeding is pending, or in which it customarily files cases, a declaration by an authorized agent executed contemporaneously or within the preceding 12-month period listing the titles of all offices of the filing organization and stating the names of the incumbents, if any, in each such office and the date of expiration of each incumbent's term, and an affidavit from each such officer, executed contemporaneously or within the preceding 12-month period, stating that he is not a member of the Communist Party or affiliated with such party and that he does not believe in, and is not a member of nor supports any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

* * * * *

SEC. 101.16 *Initiation of representation cases.*—The investigation of the question as

to whether a union represents a majority of an appropriate grouping of employees is initiated by the filing of a petition by any person or labor organization acting on behalf of a substantial number of employees or by an employer when one or more individuals or labor organizations present to him a claim to be recognized as the exclusive bargaining representative.* * * If the petition is filed by a labor organization, no investigation will be made of any question of representation raised by such labor organization unless such labor organization is in compliance with section 9 (f), (g), and (h) of the act. (See section 101.3.) * * *

* * * * *

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APPENDIX D

Budget Bureau No. 64-R001.1
Approval Expires Nov. 30, 1949

Form NLRB-501
(12-48)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

IMPORTANT—READ CAREFULLY

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 36-CA-100

Date Filed 8-3-49

Compliance Status Checked By: /s/ MK

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

NAME OF EMPLOYER: DANT & RUSSELL

NUMBER OF WORKERS EMPLOYED: 60

ADDRESS OF ESTABLISHMENT (Street and number, city, zone, and State): REDMOND, OREGON

NATURE OF EMPLOYER'S BUSINESS: LUMBER MANUFACTURING

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Said employer on or about July 18, 1949, discharged Max Gossner and H.J. Christopherson, and at all times since said date have refused to reinstate or re-employ them, all because of their membership and activities in the undersigned union.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge

International Woodworkers of America, Local 647

4. Address (Street and number, city, zone, and State): Box 384, 933 Bond Street, Bend, Oregon — Telephone No.: 1035

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

International Woodworkers of America

6. Address of National or International, if any (Street and number, city, zone, and State): Governor Building, Portland, Oregon — Telephone No.: Br. 5687

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ W. A. Babcock
(Signature of representative of person filing charge)

William A. Babcock, Attorney
(Title, if any)

8/3/49
(Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 80)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 97

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

THOMAS W. DANT, ET AL., Co-Partners d/b/a DANT & RUSSELL, LTD., *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

R. S. SMETHURST
R. S. HASLAM
Washington, D. C.

JOHN T. CASEY
R. E. KRIESIEN
CASEY, KRIESIEN & PALMER
Portland, Oregon
Counsel for Respondents

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 97

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

THOMAS W. DANT, ET AL., Co-Partners d/b/a DANT & RUSSELL, LTD., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals is reported in 195 F. (2d) 299.

JURISDICTION

As stated by Petitioner.

QUESTION PRESENTED

As stated by Petitioner.

STATUTE INVOLVED

As stated by Petitioner and presented in Appendix A of Petitioner's Brief.

STATEMENT

As stated by Petitioner.

REASONS FOR DENIAL OF PETITION

The Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit should be denied for the reasons that:

(1) The Circuit Court of Appeals has properly construed the language and intent of Section 9 (h) of the Act;

(2) The question presented by the Petition is not an important question of Federal law which has not been, but should be settled by this Court;

(3) There is no conflict between the decision of the lower Court in the instant case and decisions on the subject presented by the Petition by other United States Circuit Courts of Appeal;

(4) The question presented by the Petition is not one where the Circuit Court of Appeals has decided a Federal question in conflict with the applicable decisions of this Court.

ARGUMENT

(1) The Circuit Court of Appeals Has Properly Construed the Plain Language and Intent of Section 9 (h) of the Act.

(A) Statutory construction of Section 9 (h).

The operative portion of Section 9 (h) relative to unfair labor practices reads:

> "* * * no complaint shall be issued *pursuant to a charge* made by a labor organization under subsection (b) of Section 10, unless there is *on file* with the Board an affidavit executed *contemporaneously* or within the preceding twelve month period by each officer of such labor organization, and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party * * *." (Emphasis added)

Respondents respectfully urge that any fair analysis of Section 9 (h), compels the conclusion that compliance therewith must be effectuated contemporaneously with the filing

of the charge or within the preceding twelve month period. To adopt a contrary interpretation, as does the Petitioner, would

(a) Require or promote the use of impractical, expensive, and wasteful procedures entailing a thorough investigation and processing of all charges filed by non-complying unions, without any requirement, or even assurance that the charging union would ever come into compliance, and thereby empower the Board to further proceed, in proper cases. A necessary corollary of such an interpretation is that non-complying unions could dictate commencement of such procedures, and then aid or prevent consummation of them, as their own desires or caprice might dictate.

(b) Compel a complete disregard of the conflict between

(1) an alleged right to execute the non-Communist affidavits *contemporaneously* with the issuance of the complaint, and

(2) the statutory requirement that the non-Communist affidavits must already be "*on file*" at the time of the issuance of the complaint.

(c) Require approval of an arrangement or political alliance between Governmental representatives, and the leaders of noncomplying unions which would thwart the purposes of the Act.

Respondents respectfully submit that there is no provision in the Act to support a squandering of Board funds on possible "dead end" investigations, as would of necessity flow from Petitioner's interpretation of Section 9 (h); that nothing in Section 9 (h) supports the impractical construction that Petitioner attaches to the word "contemporaneously" as used therein; and that the purposes of the Act would be thwarted by adoption of the Petitioner's interpretation of Section 9 (h).

Respondents contend that the Board's argument as to the construction of Section 9 (h) disregards the rule of statutory construction that significance and effect should be

accorded every word and phrase of an Act; *and* that the Petitioner's attempt to negative or read out of the Act the words "pursuant to a charge" is abortive, and does violence to the rule of construction, found clearly stated in 50 Am. Jur. Statute Sections 358 and 359, pages 362-365, as follows:

> "Indeed, it is a cardinal rule of statutory construction that significance and effect should, if possible, without destroying the sense or effect of the law, be accorded every part of the Act, including every section, paragraph, sentence, clause, phrase, and word. Under this rule, that construction is favored which will render every word operative, rather than one which makes some words idle and negatory.
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> "It should not be presumed that any provision of a statute is redundant. To the contrary, it is to be presumed that one paragraph or word of a statute is not a needless repetition of another, and Courts should hesitate in ascribing careless and needless tautology to the law making body. Hence a construction will be avoided which would render a part of a statute superfluous, or which would give to a particular word or phrase the same meaning as the word or phrase preceding it, so that the latter adds nothing to the statute."

Respondents respectfully submit that the language of Section 9 (h) clearly establishes the requirement that the charging union be in compliance therewith at the *time of the filing of the charge*. Otherwise the charge is invalid and the Board is precluded from processing it.

(B) Legislative history and congressional intent re Sections 9 (f), (g) and (h).

Petitioner contends that the interpretation of Section 9 (h) made by the Court below does "violence to the manifest intention of Congress * * *," (Petition, page 6). It is significant to note, however, that the petitioner avoids consideration of all the legislative history preceding enactment of Sections 9 (f), (g) and (h) of the National Labor Rela-

tions Act, as amended, (61 Stat. 136, 29 U.S.C. Supp. IV, 141 et seq.) in its attempt to establish "Congressional intent."

Respondents contend that the legislative history establishes beyond question that it was *the Congressional intent* that compliance with the requirements of Section 9 (h) must be a *prerequisite* to the filing of a valid *charge.*

The House Report on H. R. 3020 states:

> "Section 9 (f) of the Senate amendment required labor organizations to file certain information and financial reports with the Secretary of Labor in order *to be eligible* for certification *or have charges processed* in their behalf.
>
> "The Conference Agreement (Section 9 (f) and (g)) adopts the provisions of the Senate amendment with three changes therein. First the filing of the information and reports is made a *condition of eligibility* for requesting a Union Shop Election, in addition to *eligibility for* filing petitions for representation, and *eligibility for making charges* * * *." (Emphasis added.)

Senator Taft, co-author of the Act, as amended, during Congressional debates on subsections (f) and (g) of Section 9, stated at 93 Congressional Record 3955, as follows:

> "Mr. President the bill provides that Unions must file financial reports on forms certified by the Secretary of Labor * * *.
>
> "The filing of such reports is a condition of certification as a bargaining agent under the law, and is also *a condition of the right to file any charges under the National Labor Relations Act.*" (Emphasis added.)

Senator Taft reiterated the same Congressional intent at 93 Congressional Record 6602, when he said:

> "Subsection 9 (f) and Subsection 9 (g) requiring that labor organizations *as a condition precedent to* be recognized as representatives under Section 9 or *being permitted to file charges under Section 10* must file certain information with the Secretary of Labor and furnish financial reports to their members, differs

from the corresponding subsection in the Senate amendments only with respect to 9 (f), (sic)."

Section 9 (h) was enacted under the same and identical Congressional theory or intent as Sections 9 (f) and (g). This fact is established by statements of the Act's authors.

Congressman Hartley said, on June 4, 1947, at 93 Congressional Record 6540, that:

> "The Bill further *prohibits labor organizations from invoking the processes of the Act* unless all of the officers file affidavits with the Board that they are not members of the Communist party or other subversive organizations." (Emphasis added.)[1]

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[1] In a subsequent statement, Congressman Hartley reemphasized that it was the intention of the Congress that the processes of the Board could not be started by non-complying unions. Shortly after the Board's decision in the *Northern Virginia Broadcasters, Inc.* case, (1947) 75 NLRB 11, he had published a book entitled "Our New National Labor Policy", Funk and Wagnalls Company. Therein, at pp. 162 and 163, he said:

> "Lest there be any doubt as to what we meant when we wrote that section, I want to put down here exactly what I had in mind and also report that not a single member of the House Labor Committee or the Joint House Senate Conference Committee ever indicated that it meant anything else.
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> "I meant that no Local Union could petition for an election *or file an unfair labor practice charge*, unless the officer of that Local and the officers of the international union and the officers of whichever of the two major labor organizations the international was affiliated with, had filed non-Communist affidavits * * *.
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> "The National Labor Relations Board ruled differently. In a decision remarkable for its twisted logic, the Board held that the officials of the AFL and CIO national officers were not officers of an 'affiliated organization.' As a result, the two national labor organizations we wanted most to reach were beyond reach of the law we wrote for that purpose. * * *
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> "*I would not be so concerned over this particular decision if it were not for the precedent it established for circumventing the clear intent of Congress.*" (Emphasis added.)

On June 12, 1947, Senator Taft, in describing the effect of Section 9 (h), made the following statement:

> "This provision, making the filing of affidavits with respect to Communist Party affiliation by its officers *a condition precedent to the use of the processes of the Board* has been criticized as creating endless delays." (Emphasis added). 93 Cong. Rec. 7002.[2]

In opposition to these clear declarations of Congressional intent respecting Section 9 (h), the Petitioner's sole representation of apparent Congressional intent is predicated on the failure of Congress to incorporate in a bill subsequently enacted as Pub. Law 189, 82nd Cong. 1st Session, certain recommendations of the Joint Committee of Labor and Management. While these recommendations dealt in part with the filing requirements under Section 9 (h) of the Act, they were primarily concerned with a money saving proposal resulting from problems confronting the Board as a result of its erroneous decisions concerning "labor organizations" affected by Sections 9 (f), (g) and (h) of the Act. This is made clear by House Report No. 1082 (82nd Congress, First Session, page 2) describing the bill.

That report reads in part as follows:

> "The purposes of the Bill are (1) to resolve problems arising from a recent supreme Court decision, National Labor Relations Board vs. Highland Park Manufacturing Company and * * *."
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> "It is estimated that the Bill will achieve economies in excess of $1,000,000.00. The General Counsel of the

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[2] Senator Ellender, one of the Senate conferees who had signed the Conference Report on the Act, during a 1950 debate on an N.L.R.B. reorganization plan submitted to Congress stated that:

> "One of the major provisions in the Taft-Hartley Act is the Section which *denies the facilities of the Labor Board* to labor organizations or any organizations affiliated with them *unless all the officers file affidavits* disclaiming membership in or sympathy with the Communist Party." (Emphasis added.) 96 Cong. Rec. 6955, May 11, 1950.

> National Labor Relations Board has stated that to repeat the election affected by the Highland Park decision would involve polling approximately 1,470,000 voters in Union Shop cases at an estimated cost of $735,000.00 and approximately 370,000 voters in representation cases at an estimated cost of $135,500.00. In addition the General Counsel estimates that approximately $200,000.00 might have to be spent on the conduct of investigations and litigations in complaint cases which might arise from upsetting existing certificates. The funds for these purposes are not provided in the Board's current appropriation * * *."

From the above quotation, it is obvious that Congress did not intend to amend Section 9 of the Act by Pub. Law 189, 82nd Congress, First Session. By that Act the Congress merely intended to prevent what it regarded as unnecessary expenditures in Government.

We respectfully submit that it is patently clear from the legislative history of Section 9 (h) of the Act that the *Congress intended* that filing of non-communist affidavits had to precede or accompany *a charge* filed by a Union: otherwise the charge is invalid and that filing of such affidavits thereafter does not satisfy the Congressional intent.[3]

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[3] The petition in this case further reveals that the Board is continuing to disregard Congressional intent. It states that the General Counsel has authorized reissuance of complaints which had to be dismissed as a result of this Court's decision in the *Highland Park* case, *ibid.*

See House Rept. 1082, 82nd Congress, First Session, which accompanied the bill enacted as Pub. Law 189, 82nd Congress, First Session, wherein it is said:

> "It is not intended that this Bill, in itself shall create any authority to reinstitute any unfair labor practice proceeding which has heretofore been dismissed by the Court, or by the National Labor Relations Board on the authority of the Highland Park case."

(C) The National Labor Relations Board's formal construction of Section 9 (h) of the Act, and the requirements of the Administrative Procedure Act establish that the petition here must be denied.

Respondents respectfully submit that at all times heretofore, and from the very inception of the Act, the National Labor Relations Board itself has officially interpreted the wording of the Act, and the intent of Congress, in a manner identical to that presently advocated by Respondents.

In this connection Section 203.13 (b) of Board Rules and Regulations, Series 5, effective August 23, 1947, provided as follows:

> "203.13. Compliance with Section 9 (f), (g) and (h) of the Act: * * * (b) for the purpose of these Rules and Regulations, compliance with Section 9 (h) of the Act means that a national and an international labor organization has on file with the General Counsel in Washington, D. C., and a local labor organization has on file with the Regional Director in the region in which the proceeding is pending
>
> (1) an affidavit by an authorized representative of the labor organization, under oath, *executed contemporaneously with the charge, or within the preceding twelve month period*, listing the titles of all officers * * *.
>
> (2) an affidavit by each officer referred to in paragraph (1) above, executed *contemporaneously with the charge, or within the preceding twelve month period*, stating that he is not a member of the Communist Party * * *." (Emphasis added.)

The same requirements have been set out in the Board's Rules and Regulations since the adoption of Section 203.13

(b), *supra*, and are currently found in Section 102.13 of Rules and Regulations, Series 6, effective March 1, 1951.[4]

Further, on at least one occasion the Board apparently sought to follow its own Rules in a case decision. In the *Matter of Isaac Andrews*, 87 N.L.R.B. No. 62 (1949), the Board said:

> "* * * By Section 9 (h) Congress hoped to purge Communists from the labor movement * * *.
>
> "* * * Nor do we believe that the Union's subsequent compliance cured the effects of it's non-compliance which existed at the time of its request to bargain. *The*

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[4] The current Rules read as follows:

"Sec. 102.13 *Compliance with Section 9 (f), (g), and (h) of the act.*—

"(b) For the purpose of these Rules and Regulations, compliance with section 9 (h) of the act means in the case of a national or international labor organization, that it has filed with the general counsel in Washington, D. C., and in the case of a local labor organization, that any national or international labor organization of which it is an affiliate or constituent body has filed with the general counsel in Washington, D. C., and that the labor organization has filed with the regional director in the region in which the proceeding is pending:

"(1) A declaration by an authorized representative of the labor organization, executed contemporaneously with the charge (or petition) or within the preceding 12-month period, listing the titles of all offices of the filing organization and stating the name of the incumbent, if any, in each such office and the date of expiration of each incumbent's term.

"(2) An affidavit by each officer referred to in subparagraph (1) of this paragraph, executed contemporaneously with the charge (or petition) or within the preceding 12-month period, stating that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods."

*Act does not state, nor may it be implied that the Board should give retroactive effect to the Union's compliance. * * * We do not believe that Congress intended the Board to extend retroactive protection to those organizations, which have thus thwarted an established public policy.*" (Emphasis added).

In light of the foregoing, Respondents submit that the Board's current position is untenable. As shown, the Board's own Rules require it to follow the construction of Section 9 (h) of the Act which was adopted by the Court below.

In addition, the Court's attention is respectfully directed to the fact, that by refusing to follow its own rules and thus entertaining invalid charges filed by non-complying unions, the Board has sought to make a *mockery* of the Administrative Procedure Act, 60 Stat. 237, 5 U. S. C. Sec. 1001, *et seq.*

The Administrative Procedure Act, *supra*, not only requires that rules of an administrative agency such as N. L. R. B. must be published; that Act also contemplates that such rules must be followed by the agency concerned. Otherwise, the promulgation and publication of "rules" are meaningless acts.

In the instant case, and in other cases hereinafter identified, the Board has wholly disregarded its published "Rules" which were presumably designed to guide and apprise the "public" of rights and obligations under the Act. Instead, the Board in these cases has used a *rule of convenience* in order to vest in non-complying unions, and in the Board, rights which Section 9 (h) explicitly denied. Also, by using this "rule of convenience" in these cases, the Board has sought to apply sanctions contrary to the Administrative Procedure Act, *supra*, which are not authorized by law, and which are outside the jurisdiction of the Board delegated by law.

It is the respectful contention of the Respondents that any and every order of the Board not promulgated in ac-

cordance with requirements of the Administrative Procedure Act, *supra*, is invalid *ab initio* and must be denied enforcement. It is the further contention of Respondents that the Board violated the Administrative Procedure Act, *supra*, in failing to follow its own published Rules which conformed with and were authorized by law, and in following an unlawful "rule of convenience" to attain objectives which the National Labor Relations Act forbids.

For these additional reasons, Respondents respectfully urge that the petition in the instant case be denied.

(D) Judicial determinations respecting Section 9 (h) are not at variance with the Court of Appeals decision in the instant case, but are fully in accord with that decision.

On many occasions the Federal courts have considered and decided the application of Section 9 (h) in particular factual situations. Until recently, however, only a few of the decisions have been concerned *primarily* with the specific problem before the Court in the instant case. It is the respectful contention of Respondents, nevertheless, that the decision of this Court in the case of *National Labor Relations Board* v. *Highland Park Manufacturing Company*, 341 U. S. 322, 95 L. ed. 969 has effectively settled the question sought to be raised by the Board's petition herein. Decisions of other Circuit Courts of Appeal fully support this view.

In the *Highland Park* case, this Court was confronted with the specific *question of whether an order* of the National Labor Relations Board *was valid and could be enforced since it was based upon charges filed by an affiliate of the C. I. O. whose international officers had not then complied with Section 9 (h)*.

This Court held without equivocation that a Board order based upon such charge was invalid.

In the course of its opinion, the Court emphasized that the Board's order had been challenged on the ground that

the C. I. O. affiliate was *disabled from filing a valid charge,* and that the Board was precluded by Section 9 (h) from entertaining the charge and from entering an order pursuant to a formal Board complaint based on the charge.

The Court said:

> "The order was challenged upon the grounds, among others, that the failure of the C. I. O. officers to file non-Communist affidavits *disabled its affiliate, the Textile Workers Union,* and the Board could not entertain *their complaint* and enter the order." (Emphasis added).

As the Court noted, the challenge to the validity of the Board's order was directed, in basic part, to the validity of the very charge (called "complaint" in the decision) *which started and was an integral part* of the Board's proceeding.

It might be noted here that the Board has frequently used the technical term "charge" to identify *complaints* from unions or otherwise that unfair labor practices had been or were being committed. Further, the Board has designated as a "complaint" the formal *charges* prepared by the General Counsel alleging that unfair labor practices had been or were being committed. In view of these Board usages, the Board now seeks to convince this Court that the question involved in the instant Petition is novel.

Respondents contend that the decision of this Court in the *Highland Park* case establishes beyond question that an affiliate of a non-complying national or international union cannot file a valid *charge* even though the Court used the term "complaint" to identify a "charge" as the Board has used that term.

In the preceding quotation from the *Highland Park* decision, it is clear that this Court, in using the term "complaint", referred to the "complaint" [charge] of the union; not the *formal complaint* of the Board, which *might constitute* a "complaint" in the Board's restricted terminol-

ogy. Certainly, if the Board is precluded from entertaining a "complaint" [charge] because of the disability of the filing union, it cannot hide behind a technical definition of "complaint" versus "charge" in order to avoid this statutory prohibition.

That this Court was not seeking to follow the restricted terminology of the Board in arriving at its *Highland Park* decision is supported by the following quotation from its decision:

> "The general counsel of the Board had ruled that the Board could not entertain a *complaint* under these circumstances but the Board, with one member dissenting, overruled him, for reasons stated in Re Northern Virginia Broadcasters, Inc. 75 NLRB 11. The Court of Appeals for the District of Columbia Circuit reached the same conclusion as the Board in West Texas Utilities Co. v. National Labor Relations Board 87 App. DC —, 184 F 2d 233. The Court of Appeals for the Fourth Circuit in this case, 184 F 2d 98, and the Court of Appeals for the Fifth Circuit, in the National Labor Relations Board v. Postex Cotton Mills, Inc. 181 F 2d 919, arrived at a contrary result, *holding that the Board could not entertain the complaint.* The conflicting results are each so well-considered and so thoroughly documented in opinions already appearing in the books that little could be added to either. We agree with the conclusions of the Fourth and Fifth Circuits." (Emphasis added).

The Court's attention is respectfully directed to the fact that its decision in the *Highland Park* case, *supra,* explicitly overruled the decision of the United States Court of Appeals for the District of Columbia in the case of *West Texas Utilities* v. *National Labor Relations Board,* 184 F (2d) 233, wherein that Court erroneously concluded that compliance by officers of IBEW when the charge was filed removed the *statutory disability* attached to it as an affiliate of the American Federation of Labor because the officers

of the AFL were not then in compliance with Section 9 (h).[5] Instead, the Court expressly adopted the conclusions of the U. S. Courts of Appeal in *N. L. R. B.* v. *Highland Park Manufacturing Co.*, C. A. 4, 1950, 184 F (2d) 98, and in *NLRB* v. *Postex Cotton Mills*, C. A. 5, 1950, 181 F (2d) 919.

By this decision in agreement with the conclusions of the Fourth and Fifth Circuit Courts of Appeal, this Court ruled, it is submitted, that a *valid charge* cannot be filed by an affiliate of a non-complying "labor organization", and that the Board is precluded by Section 9 (h) of the Act from entertaining or processing a charge received from an affiliate of a non-complying "labor organization". This is established by the Court's summation of its decision when it said:

> *"It would be strange indeed if the courts were compelled to enforce without inquiry an order which could only result from proceedings that, under the admitted facts, the Board was forbidden to conduct. The Board is a statutory agency and, when it is forbidden to investigate or entertain complaints in certain circumstances, its final order could hardly be valid.* We think the contention is without merit and that an issue of law of this kind, which goes to the heart of the validity of the proceedings on which the order is based, is open to inquiry by the courts when they are asked to lend their

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[5] The error of the U. S. Court of Appeals for the District of Columbia in the *West Texas Utilities* case, *supra*, as to the necessity for compliance by the A.F.L. did not affect that Court's recognition of the requirements of Section 9 (h) that a union cannot initiate Board proceedings unless non-communist affidavits are filed contemporaneously with the *union's charge*, or within the preceding 12-month period. That Court said:

> ". . . the act's only sanction for non-compliance is denial of Board facilities. Thus, if an unfair labor practice is committed by an employer, the union *may not seek Board aid* to compel him to cease and desist *unless there is on file with the Board an affidavit executed contemporaneously* or within the preceding twelve month period . . ." (Emphasis added.)

enforcement powers to an administrative tribual." (Emphasis added).[6]

Earlier in this brief, attention has been called to the fact that the Board itself, in its Rules and Regulations has construed the Act as requiring the execution of non-communist affidavits "*contemporaneously with the charge* . . . or within the preceding twelve month period." These Rules, we submit, properly interpret Section 9 (h) of the Act, and we further submit that it "would be strange indeed if the courts were compelled to enforce . . . an order which could only result from proceedings that . . . the Board was forbidden to conduct" (a) under the statute, (b) under its own Rules and Regulations, and (c) under the decision of this Court in the *Highland Park* case, *supra.*

Clearly the Court of Appeals for the Fourth Circuit in *NLRB* v. *Highland Park, supra,* determined that compliance with the requirements of Section 9 (h) must exist at the time the charging union seeks to invoke the Board's assistance.

That Court said:

> "We find no ambiguity in the language of the governing statute. On the contrary it provides as clearly as language can that *the power of the Board may not be invoked by a labor organization unless there is on file the affidavit which the statute requires* * * *

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[6] In an earlier decision of this Court, Mr. Justice Frankfurter made it clear that Section 9 (h) precludes non-complying unions from utilizing the Act's procedures. In *Communications Association* v. *Douds,* 339 U. S. 382, at p. 416, he stated:

> "It must suffice for me to say that, *the judgment of Congress* that trade unions which are guided by officers who are committed by ties of membership to the Communist Party *must forego the advantage of the Labor Management Relations Act* is reasonably related to the accomplishment of the purposes which Congress constitutionally had a right to pursue." (Emphasis added.)

"We see no reason to emasculate the statute by resorting to forced rules of interpretation when its language is perfectly clear and gives unqualified support to the purpose which Congress had in mind." (Emphasis added).

The Fifth Circuit Court of Appeals in *NLRB* v. *Postex Cotton Mills, supra,* reached the same conclusion. It stated:

"The other (National Labor Relations Act) imposes a restriction upon an agency provided and maintained by the government and directs that the benefits provided *shall be withheld from those who do not comply.*

"* * * The provision is pertinent though, as illustrative that Sec. 9 (h) evidences no novelty in expression of congressional intent to prevent any governmental department *from being used, directly or indirectly,* to promote or sustain any organization or person who believes in the overthrow of the government of the United States by unconstitutional means." (Emphasis added)

The Respondents' construction of this Court's decision in the *Highland Park* case, *supra,* is strongly supported by the decision of the U. S. Court of Appeals for the Third Circuit in the case of *NLRB* v. *Nina Dye Works, Inc.,* July 24, 1952, — F 2d —, 30 LRRM 2456.

In the *Nina Dye* case, the Court of Appeals refused to enforce an NLRB order because the C. I. O. had not filed the documents and affidavits required by Section 9 (f), (g) and (h) of the Act until after the unfair labor practice charges were filed by a complying affiliate. After noting that the Board's action *in entertaining the charge and issuing a complaint* was "directly contrary to its own regulations", the Court of Appeals said:

"In the one reported United States Court of Appeals decision squarely in point, the Ninth Circuit held that where the necessary non-Communist affidavits of the officers of the parent national labor organization were not on file when the particular charge was made by the

affiliated local union, '****the Board was not empowered to entertain the charge or to issue the complaint or the order.' National Labor Relations Board v. Dant, et al., 195 F 2d 299, 300. While the exact situation has not been passed upon to date by the Supreme Court, that Court in National Labor Relations Board v. Highland Park Manufacturing Co., 341 U. S. 322, strongly upheld the provision of Section 9 (h) calling for the officers of the national union with whom the charging local was affiliated to file non-Communist affidavits.

"The Fourth Circuit decision which had been affirmed in the above referred to opinion stated, 'we find no ambiguity in the language of the governing statute. On the contrary it provides as clearly as language can that *the power of the Board may not be invoked* by a labor organization unless there is on file the affidavits which the statute requires executed***.' 184 F 2d 98, 99. (Emphasis supplied) And see National Labor Relations Board v. Postex Cotton Mills, Inc., 5 Cir., 181 F 2d 919.

"We find no real support for the Board's present position in the citations submitted on behalf of that body. Nor do we think that there is anything helpful, as is urged, to the Board's attempted construction of 9 (h) in Senator Taft's 'Supplemental Analysis of Labor Bill (Taft-Hartley Act) as passed.' Legislative History of the Labor Management Relations Act, 1947, Vol. II. p. 1625. The Senator did say that the purpose of 9 (h) was to make the filing of the non-Communist affidavits '**** a condition precedent to use of the processes of the Board***' but it can hardly be inferred from this that in the Senator's opinion the charge, without which no complaint can be issued, is not to be considered part of the processes of the Board. Congressman Hartley, jointly responsible with Senator Taft for the 1947 Labor Management Relations Act, left no doubt as to the meaning of 9 (h) when he said:

> " 'Lest there be any doubt as to what we meant when we wrote that Section, I want to put down here exactly what I had in mind and also report that not a single member of the House Labor Committee or the Joint House-Senate Conference Committee ever indicated that it meant anything else.

"'I meant that no local union could petition for an election or file an unfair labor practice charge unless the officers of that local and the officers of the international union and the officers of whichever of the two major labor organizations the international was affiliated with, had filed non-Communist affidavits.' Hartley: 'Our New National Labor Policy', Funk & Wagnalls Company, page 162.' "

"From the wording of the statute, the construction placed upon it by the Board in its Regulation 102.13, its legislative history and the trend of the pertinent decisions, we are entirely satisfied that the Dant case was correctly decided. Therefore we hold that in this matter the Board was without jurisdiction to issue its complaint."

The U. S. Court of Appeals for the Fifth Circuit in *NLRB* v. *The American Thread Company*, — F (2d) —, July 31, 1952, reached the same conclusion under similar facts.

That Court said:

"In resisting enforcement of the order respondent urges that enforcement should be denied because at the time the original and amended charges were filed against it the Congress of Industrial Organizations had not complied with Section 9 (h) of the Act, 29 U. S. C. A. Sec. 159 (h) and that therefore the complaint issued on the basis of such charges was issued in violation of that section of the Act. The Congress of Industrial Organizations did comply with Section 9 (h) supra, in December, 1949, before the complaint was issued.[1] The respondent contends that such compliance did not have the retroactive effect of validating the charges or empowering the Board to entertain them, or to issue the complaint or order. NLRB v. Dant, 195 F 2d 299.

"In NLRB v. Dant, *supra*, the Court of Appeals for the Ninth Circuit, under a similar factual situation, held that a charge made by a labor organization at a

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"[1] NLRB v. Highland Park Co. 341 U. S. 322; NLRB v. Postex Cotton Mills, 181 F 2d 919."

time when the Congress of Industrial Organizations, of which it was an affiliate, was not in compliance with subsection (h) of Section 9, *supra*, could not be made the predicate for the issuance of a complaint by the Board, although the Congress of Industrial Organizations complied with the requirements of that subsection prior to the date of issuance of the complaint. The Board contends that the decision is unprecedented and that this construction is contrary to a 'spontaneous textual reading' of the statute. In NLRB v. Postex Cotton Mills, 181 F 2d 919, this Court had occasion to consider the purpose of Congress in enacting the statute in question and concluded that it was with the intent to 'wholly eradicate and bar from leadership in the American Labor movement at each and every level, adherents to the Communist party and believers in the unconstitutional overthrow of our Government'.

"The Board argues that the statute should be construed to place a limitation upon its power to issue a complaint in cases where a charge has been filed by a non-complying labor organization and not to disqualify a non-complying labor organization from filing charges. But the broad purpose of the Act covers both situations. *The statute withdraws from its creature, the Board, the power to employ its processes in aid of a non-complying union, and likewise evidences the clear purpose to disentitle and exclude such non-complying union from setting in motion the processes of the Board.* Both of these results are necessary to insure complete effectuation of the Congressional intent. *Congress intended to remove from the protection of the Act those labor organizations which could not, or would not, bring themselves into compliance and thereby withheld from such organizations not only the processes of the Board, but also the benefits of the Act.* NLRB v. Postex Cotton Mills, supra; NLRB v. Case Co. 189 F 2d 599. Inasmuch as the charges were filed at a time when the union was not in compliance and since the subsequent compliance had no retroactive effect to give legal substance to the charges, to empower the Board to issue the complaint, the order of the Board is unauthorized

and cannot be enforced. NLRB v. Dant, *supra*, and cases cited." (Emphasis added).[7]

In the statements of this Court, and the statements of the various Circuit Courts of Appeal hereinabove quoted, there is no deviation from the proposition that Section 9 (h) requires that non-communist affidavits must be on file before a union may "invoke" the processes of the Board. There can be no question but that the filing of a charge is designed to invoke the processes of the Act; in fact, the filing of such a charge constitutes the first step of such processes. As this Court emphasized in the *Highland Park* decision, *supra, if the charge is invalid because of non-compliance, then all the processes are invalid, and any Board order is likewise invalid.*

This interpretation of Section 9 (h) was adopted by the Ninth Circuit Court of Appeals in the instant case, and has since been adopted by other United States Courts of Appeal as hereinabove shown.

In view of the language of that Section, 9 (h), its undisputed legislative history, the construction of the Section in the Rules and Regulations of the National Labor Relations Board, and the earlier decisions of this Court and in various Circuit Courts of Appeal, we submit that no other interpretation of Section 9 (h) is sustainable.

(2) The Question Presented by the Petition Has Been Settled by This Court, and There is No Conflict Between the Decision of the Lower Court and the Decisions of This Court.

The question presented by the petition in this case has already been settled by this Court in its decision in the *Highland Park* case, *supra.*

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[7] For additional decisions holding that compliance cannot be made retroactive, and validate a charge filed by a non-complying union, see *N.L.R.B.* v. *Clark Shoe Co.*, C. A. 1, (1951), 189 F. (2d) 731 at 732, and *N.L.R.B.* v. *J. I. Case Co.*, C. A. 8, (1951), 189 F. (2d) 599.

It is absolutely clear from the Court's decision in that case that any union which is affiliated with a non-complying national or international union is "disabled" by Section 9 (h) of the Act from filing a valid charge. Further, the decision establishes that even though the Board may entertain and process such an invalid charge, that all of its proceedings are invalid and that any order based upon such invalid proceedings is invalid and unenforceable.

CONCLUSION

In conclusion, Respondents respectfully submit that the Petition for Writ of Certiorari in this case should be denied for the reasons that

(1) The Circuit Court of Appeals has properly construed the language of Section 9 (h) in the instant case;

(2) The decision of the Circuit Court of Appeals is fully supported by the legislative history of Section 9 (h);

(3) The Board's action in the instant case was unauthorized by the National Labor Relations Act, as amended, *supra*, and was taken in direct violation of the Administrative Procedure Act;

(4) The decision of the lower Court conforms with the decision of this Court in the *Highland Park* case, *supra*, and is in complete harmony with decisions of other circuit courts of appeal, and

(5) The questions raised by the Petition have already been settled by this Court in its *Highland Park* decision, *supra*.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 97

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

THOMAS W. DANT, ET AL., Co-Partners d/b/a DANT & RUSSELL, LTD., *Respondents*.

BRIEF FOR THE RESPONDENTS

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BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 195 F. 2d 299 (R. 588-590). The findings, conclusions, and orders of the Board (R. 6-38, 50-56, 59-60) are reported at 92 NLRB 307, and 95 NLRB 252.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U. S. C. 1254, and Section 10(e) of the National Labor Relations Act, as amended. The decision and decree of the Court of Appeals was entered on March 20, 1952 (R. 588-591). The petition for a writ of certiorari was granted on October 13, 1952.

QUESTIONS PRESENTED

An unfair labor practice charge was filed by a local CIO union when the officers of the CIO had failed to file non-Communist affidavits as required by Section 9(h) of the National Labor Relations Act, as amended. Such prescribed affidavits were filed by said officers before the complaint was issued based on the local union's charge. The questions presented are (1) whether a union is empowered to file a valid charge when its officers are not in compliance with Section 9(h), and (2) whether the Board is authorized to take any action with respect to such a charge.

STATUTE INVOLVED

The statutory provision directly involved herein is Section 9(h) of the National Labor Relations Act, as amended, hereinafter referred to as the Labor Management Relations Act, 1947, or the "Act" (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*). This provision of the statute and other relevant parts thereof are set out in the Appendix hereto.

STATEMENT

On July 18, 1949, the Company (Respondents' herein) discharged two employees for loafing during the preceding three consecutive workdays (R. 21, 22, 71, 183, 432, 569). On August 3, 1949, International Woodworkers of America, Local 6-7, CIO, the recognized bargaining agent for the Company's employees, filed a charge with the Board alleging that the discharges violated Section 8(a)(1) and (3) of the Act (R. 6-7). When this charge was filed the officers of the CIO had not executed and filed non-Communist affidavits as required by Section 9(h) of the Act. The CIO officers did not file the non-Communist affidavits until December 22, 1949. During the interval, as the record indicates, the Board had invoked the processes of the Act on behalf of the charging union by investigating its charge (See R. 569).

On or about March 27, 1950, the General Counsel on behalf of the Board issued a complaint based on the charge filed on

August 3, 1949 when the union was not in compliance with Section 9(h). The customary proceedings were then conducted by the Board. On November 29, 1950 the Board issued its decision and order. (R. 6-38).

On June 6, 1951 the Company moved the Board to reconsider its decision and order on the grounds, among others, that the union was not in compliance with Section 9(h) of the Act when the charge was filed with and accepted by the Board (R. 57-59). This motion was denied by the Board on July 17, 1951 (R. 59-60). In the interval, on June 20, 1951, before it acted upon the Company's motion for reconsideration of its decision and order, the Board petitioned the United States Court of Appeals for the Ninth Circuit for enforcement of its decision and order (R. 575-584).

The United States Court of Appeals for the Ninth Circuit as the record shows, did not consider the merits of the Board's findings and made no determination of the question as to whether the employees had been discharged for loafing as the Company has always contended. Instead, the Court below set aside the Board's order on the ground that "the Board was not empowered to entertain the charge or to issue the complaint or order" by reason of Section 9(h) of the Act.

SUMMARY OF ARGUMENT

I.

The explicit language of Section 9(h) considered in its context, requires unions (labor organizations) to file non-Communist affidavits as a condition precedent to their filing of valid petitions in representation matters, or valid charges in unfair labor practice cases. This Section deprives the Board of power to *process* any petition or charge filed with it by a non-complying union. Accordingly, Section 9(h) precludes non-complying unions from filing *valid* charges, and prohibits the Board from taking any action on a charge filed by a non-complying union.

II.

The legislative history of Section 9(h) and the related "filing requirement" sections of the Act establish beyond question that Congress intended that compliance therewith was to be a *prerequisite* to the filing of a valid charge by a union, as well as to the power of the Board to assert jurisdiction over a union charge. The legislative history record is consistent and leaves no question for doubt as to Congressional intent.

III.

The National Labor Relations Board, in its formal Rules and Regulations and in its Statements of Procedure has always interpreted Section 9(h) in complete conformity with the interpretation herein urged by Respondents and adopted by the Court below.

IV.

All lower Federal Court decisions attach the same significance and effect to Section 9(h) as is urged by Respondents herein. Further, this Court has previously decided the issue raised by the Board herein and has made it clear that Section 9(h) of the Act denies to non-complying unions the right to file *valid* petitions or charges with the Board, and deprives the Board of any authority it may otherwise have to process in any manner a petition or charge filed by a non-complying union.

I

ARGUMENT

The Content and Context of the Filing Requirement Sections of the Act Support the Conclusions of Respondents That Compliance With Section 9(h) Is a Condition Precedent to the Filing of a Valid Charge by a Union

Section 9(h) is one of three sections in the Act requiring specific affirmative acts by labor organizations as conditions precedent to their utilization of the Act's procedures and processes.

Section 9(f) requires the filing of certain organizational and financial data. Section 9(g) requires that the data filed under 9(f) must be kept current and must be furnished annually to members of the labor organization. Section 9(h) requires that non-Communist affidavits be filed and kept current.[1]

Section 9(h) provides as follows:

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9(e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the over-

[1] The operative language of Sections 9(f) and (g) relating to unfair labor practices is as follows:

9(f):

". . . no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have *prior thereto filed* [certain material] and (B) can show that *prior thereto* it has *performed* [certain acts]."

9(g):

". . . no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit *has complied with its obligation* under this subsection."

throw of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits."[2]

Considered reading of this section compels the conclusion that it was and is designed and intended to deprive the Board of jurisdiction to take any action upon *petitions* or *charges* filed by non-complying labor organizations. As a corollary, of course, the section deprives non-complying unions of the right available to complying unions to have petitions or charges *processed* by the Board.[3]

The language of Section 9(h) establishes beyond question that the Congress was fully aware that the processes of the Act could not be invoked even by a complying labor organization unless that organization filed with the Board (1) a petition in the case of a representation or union shop matter; or (2) a charge in a matter involving alleged unfair labor practices. And it was this right to file a valid petition or charge that Congress intended to restrict.

For a union to be eligible to invoke the Act's processes and set the Board's machinery in motion, Section 9(h)

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[2] This Section specifically embodies terms used to describe Board actions authorized in other sections. In composite, the section clearly prohibits the Board from taking any action to start the processes of the Act on a petition or charge filed by a non-complying union.

We do not suggest that the section precludes the Board from *receiving* petitions or charges from non-complying unions. We do urge, however, that this Section prohibits the Board from granting *any benefits* made available by the Act to non-complying unions. In unfair labor practice cases pronounced benefits result from a Board investigation. Such an action, we submit, is prohibited by Section 9(h) if the union was not in compliance with this Section when the *charge* was filed.

[3] The Board itself has taken the position that the acceptance and investigation of a charge are as much a part of the Act's processes as are the issuance of a complaint and subsequent proceedings. See *NLRB* v. *Wiltse*, C. A. 6, 188 F. 2d 917. In the cited decision the Court of Appeals agreed with that view which accords with that advanced by the Respondents herein.

provides clearly that non-Communist affidavits must be filed "contemporaneously" with the request for the Board's assistance. In the alternative, such affidavits must have been filed within the preceding 12-month period. To interpret the statutory language of Section 9(h) in any other way would read out of that section the time limitation provision contained in it. Certainly, it cannot be questioned that the Board's interpretation in this case, e.g.—that the time limitation as applied to unfair labor practice matters relates to the date of the Board's complaint—reads out of the section the term "contemporaneously."

It is the contention of Respondents that Section 9(h) means this: No action whatever may be taken by the Board on any *petition* or any *charge* of unfair labor practices presented or filed by a labor organization unless the officers of that organization and the defined affiliates have complied with Section 9(h) *on or before* the date when the *petition* or *charge* is filed.

To support this position, the Court's attention is respectfully directed to the actions the Board is empowered to take under Sections 9(c), 9(e) and 10(b), all of which are restricted by Section 9(h) prohibitions.

Section 9(c) provides that whenever a petition is filed "the Board shall investigate" it and take further steps if the investigation reveals cause therefor. *Section 9(e)* provides that whenever a labor organization files a "union shop" petition and makes an appropriate showing, then "the Board shall . . . take a secret ballot of such employees, and shall certify the results thereof" to the union and the employer. *Section 10(b)* provides that when it is charged that unfair labor practices had been or are being committed, "the Board . . . shall have power to issue and cause to be served upon such person a complaint stating the charges . . ."

The very language of Section 9(h), we submit, deprives the Board of any authority whatsoever to act on union petitions or charges unless the union is in compliance with

that section when the petition or charge is filed with the Board. This section explicitly precludes the Board from taking the first action otherwise permissible on petitions or charges filed by complying unions.

In the case of representation petitions, Section 9(c) provides that the Board must *investigate*. This is the first step to be taken by the Board. However, Section 9(h) deprives the Board of authority to proceed with the investigation unless the union is eligible to have the petition investigated by compliance with Section 9(h).

In the case of 9(e) petitions, the Board is compelled to conduct an election upon an appropriate showing by the union. But when 9(e) cases were affected by Section 9(h) prohibitions, the Board was expressly precluded from conducting an election (entertaining the petition).[4] These prohibitions of Section 9(h) as they relate to the authority of the Board to proceed with union shop petitions, we submit, establishes beyond question the intent and application of the time limitations feature on filing non-Communist affidavits. The limitation means that "unless there is on file with the Board an affidavit executed contemporaneously with [the petition] or within the preceding 12-month period", then the Board is wholly without authority to do anything with the petition.[5]

As in representation petition cases, (involving 9(c) proceedings) the language of Section 9(h) deprives the Board of any authority to take the action specifically authorized by Section 10(b) unless the charging labor organization is in compliance when it seeks the assistance of the Board. While Section 9(h) identifies a "complaint", it is clear that

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[4] We recognize that Section 9(h) restrictions no longer apply to union shop petitions. Nevertheless, we contend that the 9(h) restrictions as they did apply to union shop petitions have a direct bearing upon the matters here under consideration.

[5] This portion of Section 9(h) demonstrates as clearly as possible that the Section was designed to prohibit the Board from taking any action whatsoever on a presentation of a charge by a non-complying union.

in the context utilized by Congress, the intent with respect to Board action on a charge or a petition was the same—namely that the Board had no authority to process the charge or petition unless the union was in compliance with Section 9(h).[6]

There can be no question about the fact that the explicit prohibition against Board action in 9(c) and 10(b) cases referred to the first possible action the Board was empowered to take under the explicit statutory language. Further, there can be no question but that the time limitation clause deprived the Board of any jurisdiction to do anything with a union shop election petition unless there was compliance when the petition was filed. In this context, we respectfully submit that the time limitation clause was and is clearly related to the time when the union seeks to invoke the processes of the Act and that the clause applies with equal vigor to each proceeding mentioned in Section 9(h). If compliance is not present when the union seeks Board assistance, Section 9(h) precludes the Board from doing anything whatever with the petition or charge. We further submit, that if the Board does process a petition or a charge filed when the union is not in compliance as was the case here, then any Board certification, or Board order is a nullity, and must be set aside.

Respondents are well aware of the Board's position that the "grammatical symmetry" of Section 9(h) compels the conclusion that the time limitation clause—"unless there is on file . . . contemporaneously or within the preceding twelve-month period"—applies differently to the three types of proceedings mentioned in Section 9(h). This posi-

[6] There can be no argument about the fact that Section 9(h) prohibits the Board from taking the first authorized action in 9(c) and 9(e) matters, which prohibitions preclude it from taking *any action* in these matters on behalf of non-complying unions. Further, it cannot be disputed that in these cases, Congress imposed prohibitions on the Board in reference to procedural steps the Congress had identified in other sections.

tion, we have demonstrated, disregards the cohesive character of Section 9(h), and its clearly expressed intent.[7]

The prohibitions against Board action in cases of non-complying unions contained in Sections 9(f) and 9(g) are, Respondents contend, *identical* in purpose to those in 9(h). Under Sections 9(f) and 9(g) the Board is precluded from taking any action on petitions or charges unless the petitioning or charging union has complied with the filing requirements "prior" to the filing of the petition or charge with the Board. To attach any other significance to these sections as does the Board is to disregard their clear language and their common sense meaning.

Further, and in particular reference to Section 9(h), as was noted in respondents' brief in opposition to the petition for writ of certiorari, to adopt the Board's construction would

> "(a) Require or promote the use of impractical, expensive and wasteful procedures entailing a thorough investigation and processing of all charges filed by non-complying unions, without any requirement, or even assurance that the charging union would ever come into compliance, and thereby empower the Board to further proceed, in proper cases. A necessary corollary of such an interpretation is that non-complying unions could dictate commencement of such procedures, and then aid or prevent consummation of them, as their own desires or caprice might dictate.
>
> "(b) Compel a complete disregard of the conflict between
>
> (1) an alleged right to execute the non-Communist affidavits *contemporaneously* with the issuance of the complaint, and

[7] The "grammatical symmetry" argument of the Board blots out from Section 9(h) the practical, real, and intended effect of the time limitation clause contained therein as applied to a charge. Further, the Board's construction disregards the clearly expressed policy of the legislation. See *U. S.* v. *American Trucking*, 310 U. S. 534.

(2) the statutory requirement that the non-Communist affidavits must already be "*on file*" at the time of the issuance of the complaint.

"(c) Require approval of an arrangement or political alliance between Governmental representatives, and the leaders of non-complying unions which would thwart the purposes of the Act."[8]

Respondents respectfully submit that the unrealistic construction of Section 9(h), as urged by the Board, would result in the highly expensive and wasteful procedures under which investigations would be made on charges filed by non-complying unions with the Board being helpless to further proceed in event of continuing non-compliance. Further, respondents submit that the Board's interpretation permits it to provide non-complying unions with very substantial benefits under the Act without any assurance of compliance by them. In this connection, it must be recognized that the Board's investigation of any unfair labor practice charge, results in the charging union forthwith obtaining the highly advantageous position of having on its side the full power of the Federal Government. Further, as the Board admits in its Brief, a large majority of unfair labor practice charges are disposed of by the Board during the investigation. (See Board's Brief, page 12, footnote 6.) Under the Board's construction of Section 9(h), non-complying unions could receive substantial benefits through the process of investigation and stipulated settlements. Such a result is so clearly in conflict with the intent of Section 9(h) as to make the Board's interpretation incongruous.

In the instant case, the Board clearly made available to the non-complying union the benefits of the Act since it appears the Board's investigation was started as early as August 16, 1949. (See General Counsel's Ex. 2, R. 569).

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[8] Brief of Respondents in opposition to petition for Writ of Certiorari, page 3.

Had the Respondents been less certain of their position that the employees were discharged for good cause, and not in violation of the Act, it is entirely possible that the Board could have given the union all needed benefits of the Act by obtaining reinstatement of the workers during the investigation.

It must be apparent from the foregoing that under the Board's interpretation of Section 9(h), in many cases, a non-complying union could obtain a major part of the Act's benefits when it filed an unfair labor practice charge. This result, we submit, is directly prohibited by the language of Section 9(h), and as will be shown, is in conflict with the declared intent of Congress.

II

The Legislative History of Section 9(h) and Related Sections Compels the Interpretation Adopted by the Court Below

As mentioned earlier, Sections 9(f), 9(g), and 9(h) of the Act have a common legislative history. All were intended to have the same consequences. Thus, all must be construed together. The legislative history of these sections establishes beyond question that it was the undisputed intent of Congress that compliance with Section 9(h) was to be a *prerequisite* to the filing of a valid charge by a union; and that the Board was to have no jurisdiction whatever over invalid charges.

The Board, in its brief seeks to discount all phases of legislative history because it asserts that resort to the legislative history is unnecessary.

We do not contend here that it is necessary for this Court to base its judgment on the legislative history of Section 9(h), because we believe the language of this section and other sections prove the accuracy of our interpretation of Section 9(h). In view of the Board's position, however, we think examination of the legislative history highly appropriate here. We submit that the legislative history of Section 9(f), (g) and (h) proves conclusively that no

union is entitled to invoke the processes under Section 10(b) of the Act unless that union is in compliance with Section 9(h) when the charge of unfair labor practices is filed. Authoritative statements contained in Committee Reports, and from sponsors of the Act all indicate a clear intention to prevent unions from having any *petition* or *charge* processed (acted upon in any way) unless the union was in compliance with Section 9(h) when the petition or charge was filed.

The Conference Report, House Rept. 510, 80th Cong., 1st Sess., which accompanied H. R. 3020, the bill enacted as the Labor Management Relations Act, 1947, states at pages 51 and 52, as follows:

> "The conference agreement (sec. 9(f) and (g) adopts the provisions of the Senate amendment with three changes therein. *First*, the filing of the information and reports is made a condition of eligibility for requesting a union shop election, *in addition to eligibility for filing petitions for representation and eligibility for making charges. Second*, it is provided that not only the particular labor organization *invoking the processes of the act*, but also any national or international labor organization of which it is an affiliate or constituent unit, must *file the required information and reports.* (Emphasis added)

From the foregoing excerpt from the Conference Report, it is clear that the Conference agreement more nearly followed provisions originally embodied in the Senate Bill, S. 1126. The Senate Report, No. 105, 80th Cong. 1st Sess., at page 26, describes the effect of section 9(f) as contained in that Bill. It states:

> "Section 9(f): This requires labor organizations to file certain information and financial reports with the Secretary of Labor *in order to be eligible for certification or have charges processed in their behalf.* (Emphasis added).

That there was no question about the intent of the filing requirement section of S. 1126 is further revealed by the

statements of the minority of the Senate Committee on Labor and Public Welfare. The report of "Minority Views", Senate Rept. 105, Part 2, 80th Cong., 1st Sess., which also accompanied S. 1126, contains the following statement at page 22:

> "Sections 9(g) and (h) of the bill would require unions to file, both annually with the Secretary of Labor *and as a prerequisite to each initiation of a representation investigation or unfair labor practice proceeding against an employer*, extensive and detailed reports on their financial affairs and other activities, such as manner and mode of elections, initiation fees, and dues, and to furnish such financial reports to their members. The effect of these provisions is to encourage resort to self-help by unions instead of encouraging them to resort to the procedures provided by the Act. This is an inevitable result of erecting these additional obstacles to *securing the relief the Act is designed to provide.*" (Emphasis added).[9]

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[9] See also statements of Senators Morse and Murray who were both thoroughly familiar with the content and purposes of the filing requirement sections.

Senator Morse, at 93 Cong. Record 6452, while directing his attention to section 9(f)(6) stated as follows:

> "* * * Employers will be quick to make such allegations because *full compliance is made a condition precedent to the Board's jurisdiction for all purposes.*" (Emphasis added.)

Senator Morse further stated at 93 Cong. Record 6455, that

> "My next objection related to the so-called anti-communist provisions of the bill. * * * Under the terms of the bill, however, every *local union will be denied all access to the peaceful machinery of the Act if it has an officer*, or if its parent body has an officer a Communist or Communist sympathizer, in fact or alleged." (Emphasis added.)

Senator Murray at 93 Congressional Record 6497, while according consideration to Section 9(h) made the following pertinent comment:

> "Another respect in which the conferees have worsened the measure by making resort to the peaceful processes of the government difficult is found in the provision of Section 9(h) dealing with the Communist issue. * * * Here again if a labor

Declarations by co-authors of the Act during the Congressional debates did not deviate from these understood purposes of the sections. On at least two occasions, Senator Taft described the character of the compliance requirement of Section 9(f) in a manner that cannot be misunderstood.

At 93 Cong. Rec. 3955, the following statement by Senator Taft respecting Section 9(f) appears:

> "Mr. President the bill provides that Unions must file financial reports on forms certified by the Secretary of Labor * * *.
>
> "The filing of such reports is a condition of certification as a bargaining agent under the law, and is also *a condition of the right to file any charges under the National Labor Relations Act.* (Emphasis added).

Later, Senator Taft had included in the Congressional Record an analysis of the various provisions of the Act. His statement concerning Sections 9(f) and (g) appears at 93 Cong. Rec. 6602, as follows:

> "Subsection 9(f) and Subsection 9(g) requiring that labor organizations *as a condition precedent to* be recognized as representatives under Section 9 or *being permitted to file charges under Section 10* must file certain information with the Secretary of Labor and furnish financial reports to their members, differs from the corresponding subsection in the Senate amendments only with respect to 9(f) (sic)." (Emphasis added)

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organization has a Communist officer, *the right of the Union to seek the processes of the Board is gone* * * *" (Emphasis added.)

Senator Murray further stated at 93 Congressional Record 6499 as follows:

> "Mr. President, I have already adverted to the burdensome registration requirements which Unions are compelled to comply with *as a condition precedent to seeking the dubious privilege of resort to the machinery of the National Labor Relations Act, as amended.* * * *" (Emphasis added.)

Section 9(h) of the Act was drafted after Sections 9(f) and (g). Its language is similar to Sections 9(f) and 9(g); and its purposes are equally clear.[10] In light of the legislative history of Sections 9(f) and (g), we submit that the Congress intended the same consequences to result from non-compliance with Section 9(h) as those resulting from non-compliance with Sections 9(f) and (g) upon which Section 9(h) was patterned. Accordingly, the conclusion is inescapable that Congress intended compliance with Section 9(h) was to be a prerequisite to any filing of a valid charge by a union. The Congress further intended, it is clear, that the Board should be without authority to take any action whatever on a charge filed by a non-complying union. These conclusions are fully supported by additional portions of the legislative history.

To illustrate, on June 4, 1947 Congressman Hartley explained the intended application of Section 9(h) when he said:

> "The Bill further *prohibits labor organizations from invoking the processes of the Act* unless all of the officers file affidavits with the Board that they are not members of the Communist party or other subversive organizations." (Emphasis added). (93 Cong Rec. 6540)[11]

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[10] See footnote 1, *supra*.

[11] In a subsequent statement, Congressman Hartley reemphasized that it was the intention of the Congress that the processes of the Board could not be started by non-complying unions. Shortly after the Board's decision in the *Northern Virginia Broadcasters, Inc.* case, (1947) 75 NLRB 11, he had published a book entitled "Our New National Labor Policy", Funk and Wagnalls Company. Therein, at pp. 162 and 163, he said:

> "Lest there be any doubt as to what we meant when we wrote that section, I want to put down here exactly what I had in mind and also report that not a single member of the House Labor Committee or the Joint House Senate Conference Committee ever indicated that it meant anything else.
>
> "I meant that no Local Union could petition for an election *or file an unfair labor practice charge*, unless the officer of that Local and the officers of the international union and the

Later, on June 12, 1947, when the Conference Report was under consideration by the Senate, Senator Taft made it absolutely plain that union compliance with Section 9(h) was to be a condition precedent to that union's ability to invoke the Act's processes. He said:

> "This provision, making the filing of affidavits with respect to Communist Party affiliation by its officers *a condition precedent to the use of the processes of the Board* has been criticized as creating endless delays. (Emphasis added). 93 Cong Rec. 7002.

In light of the foregoing, it is respectfully submitted that there can be no question of Congressional intent respecting the effect of Sections 9(f), (g) and (h). The legislative history of these sections establishes beyond doubt that Congress intended to deprive non-complying unions of any and all benefits afforded by the Act, and at the same time to deprive the Board of jurisdiction to take *any action* on petitions or charges filed by non-complying unions.

In attempted answers to these clear declarations of Congressional intent, the Board suggests that by failing to specifically repudiate by legislation the Board's interpretation of Section 9(h), the Congress has approved of that interpretation.

Respondents submit that these suggestions of the Board are wholly without merit. Certainly, as has been shown, the expressions establishing Congressional intent have been

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officers of whichever of the two major labor organizations the international was affiliated with, had filed non-Communist affidavits * * *.

"The National Labor Relations Board ruled differently. In a decision remarkable for its twisted logic, the Board held that the officials of the AFL and CIO national officers were not officers of an 'affiliated organization.' As a result, the two national labor organizations we wanted most to reach were beyond reach of the law we wrote for that purpose. * * *

"*I would not be so concerned over this particular decision if it were not for the precedent it established for circumventing the clear intent of the Congress.*" (Emphasis added.)

continuous and consistent. Even at late as 1950, when the Senate was considering an NLRB reorganization plan, Senator Ellender, a member of the Senate Committee which considered the bill, and one of the conferees who signed the Conference Report, declared with respect to Section 9(h):

> "One of the major provisions in the Taft-Hartley Act is the section which *denies the facilities of the Labor Board* to labor organizations or any organizations affiliated with them *unless all the officers file affidavits* disclaiming membership in or sympathy with the Communist Party." (Emphasis added.) (96 Cong. Rec. 6955, May 11, 1950.)

The second "answer" of the Board to the unequivocal legislative history of Section 9(h) is equally untenable. As this Court is well aware, the Congress, as a consistent policy, relies upon the courts to interpret the laws it enacts. As a general rule, therefore, the Congress awaits court interpretations before amending statutes to more clearly express Congressional intent. Until the Courts have acted, there is no real occasion for Congress to consider or act upon an agency's construction of any given statute it may be charged with administering or enforcing. Actually, therefore, a more plausible explanation of the inaction of Congress respecting the Board's interpretation of Section 9(h) is that the Congress believed the courts had repudiated the Board' interpretation of Section 9(h).[12]

The two occasions when Congress considered amendments to the act which are cited by the Board to support its view that Congressional inaction on Section 9(h) constitutes approval by Congress of the Board's interpretation of that Section, are totally insufficient. In the one instance, the Congress was dealing solely with the union shop problem which resulted in enactment of Public Law 189, 82nd Cong., 1st Sess. This law was designed and intended only to pre-

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[12] See NLRB v. Highland Park Manufacturing Co., C. A. 4, 1950, 184 F. 2d 98; NLRB v. Postex Cotton Mills, C. A. 5, 1950, 181 F. 2d 919.

vent what Congress regarded as unnecessary expenditures by Government.[13] On the other occasion when amendments to the Act were considered by Congress in 1949, (S. 249, 81st Cong. 1st Sess.), the Senate passed several amendments, but these were never acted upon by the House of Representatives. Thus, the intent of the Congress as indicated by its inaction on the 1949 amendments amounts to sheer speculation.

III

The National Labor Relations Board's Formal Construction of Section 9(h) Supports the Respondent's Position Herein and the Court of Appeals Decision

The position asserted by the Board in this case is in direct conflict with its own formal administrative rules, regulations and practices. From the very inception of the

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[13] The specific suggestion of the Board that the failure of Congress to incorporate certain recommendations of the Joint Committee on the Labor Management Relations Act in Public Law 189, 82nd Cong. is without merit. It is absolutely clear from the report accompanying that bill that Congress was merely interested in preventing unnecessary expenditures of money by the Board to repeat certain elections conducted prior to the *Highland Park* decision. See House Rept. 1082, 82nd Cong. 1st Sess., page 2, reading in part as follows:

> "The purposes of the Bill are (1) to resolve problems arising from a recent Supreme Court decision, National Labor Relations Board vs. Highland Park Manufacturing Company and * * *."
>
> "It is estimated that the Bill will achieve economies in excess of $1,000,000.00. The General Counsel of the National Labor Relations Board has stated that to repeat the election affected by the Highland Park decision would involve polling approximately 1,470,000 voters in Union Shop cases at an estimated cost of $735,000.00 and approximately 370,000 voters in representation cases at an estimated cost of $135,500.00. In addition the General Counsel estimates that approximately $200,000.00 might have to be spent on the conduct of investigations and litigations in complaint cases which might arise from upsetting existing certificates. The funds for these purposes are not provided in the Board's current appropriation * * *."

Act, the Board, in its formal rules and regulations, has interpreted the wording of the Act and the clear intent of Congress in a manner practically the same as the Court below. Stated differently, the formal rules of the Board have consistently required, by their terms, that there must be compliance with Sections 9(f), (g) and (h) of the Act at the time the charge is filed. See section 203.13 of the Board's Rules and Regulations, Series 5, and section 202.3 of its Statements of Procedure, effective August 23, 1947.[14] These rules and procedures were the first promulgated under the amended Act. They provided as follows:

> "203.13 : Compliance with Section 9(f), (g) and (h) of the Act:
>
> (b) For the purpose of these rules and regulations, compliance with section 9(h) of the act means that a national and an international labor organization has on file with the General Counsel in Washington, D. C. and a local labor organization has on file with the Regional Director in the region in which the proceeding is pending:
>
> (1) *An affidavit* by an authorized representative of the labor organization, under oath, *executed contemporaneously with the charge* or within the preceding 12-month period, listing the titles of all offices . . .
>
> (2) *An affidavit* by each officer referred to in paragraph (1) of this paragraph, *executed contemporaneously with the charge* or within the preceding 12-month period, stating that he is not a member of the Communist party . . ." (Emphasis added).
>
> "202.3 *Compliance with Section 9(f), (g) and (h) of the Act:*

[14] The non-Communist Affidavit Form required to be executed by officers of unions, NLRB Form 1081, contains the following significant statement in the instructions for use:

> "Who Must File—This affidavit must be filed by each officer of a labor organization *before that organization may receive the help of* the National Labor Relations Board." (Emphasis added.)

If the charge is filed by a labor organization, that labor organization must present either *with the charge* or within a reasonable period not to exceed 10 days thereafter (evidence of compliance with 9(f) and (g)). In addition the labor organization and every national or international labor organization of which it is an affiliate or constituent unit must have complied with section 9(h) of the act by filing with the General Counsel of the Board in Washington, D. C. either *with the charge* or within a reasonable period not to exceed 10 days thereafter . . ." (Emphasis added).

The same requirements have been contained in the Board's Rules and Regulations and its Statements of Procedure at all times since the adoption of the quoted rules and statements and in substantially the same language. These requirements are currently set out in Section 102.13 of Rules and Regulations, Series 6, and Section 101.3 of Statements of Procedure, effective March 1, 1951.[15]

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[15] Current Rules of the Board read as follows:

Section 102.13 . . .

"(b) For the purpose of these Rules and Regulations, compliance with section 9(h) of the act means in the case of a national or international labor organization, that it has filed with the general counsel in Washington, D. C., and in the case of a local labor organization, that any national or international labor organization of which it is an affiliate or constituent body has filed with the general counsel in Washington, D. C., and that the labor organization has filed with the regional director in the region in which the proceeding is pending:

(1) A *declaration* by an authorized representative of the labor organization, *executed contemporaneously with the charge (or petition) or within the preceding 12-month period*, listing the titles of all offices of the filing organization and stating the name of the incumbent, if any, in each such office and the date of expiration of each incumbent's term.

(2) An *affidavit* by each officer referred to in subparagraph (1) of this paragraph, *executed contemporaneously with the charge (or petition) or within the preceding 12-month period*, stating that he is not a member of the Com-

Although Respondents do not concede the reasonableness or validity of the Board's ten-day rule, Respondents do submit that the formal rules of the Board are more nearly in accord with Section 9(h) of the Act. In this case charges were filed on August 3, 1949, but the C. I. O. affiliate was not in compliance until December 22, 1949. We earnestly contend that by failing to follow its rules at the time the proceeding in the instant case was initiated by the charge, the Board violated not only Section 9(h) of the Act but also failed to conform to the Administrative Procedure Act

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munist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods."

"Sec. 101.3 *Compliance with section 9(f), (g), and (h) of the act.*—If a charge (or petition) is filed by a labor organization, that labor organization and every national or international labor organization of which it is an affiliate or constituent unit must have complied with section 9(f), (b) (2) of the act. *At the time of filing the charge (or petition) or prior thereto*, or within a reasonable period of time thereafter not to exceed 10 days, the labor organization must present the duplicate copy of a letter from the United States Department of Labor showing that it has filed the material required under section 9(f) and (g) of the act and a declaration executed by an authorized agent stating the labor organization has complied with section 9(f) (b) (2) and setting forth the method by which compliance was made." (Emphasis added.)

* * * *

In the *Matter of Isaac Andrews*, 87 N. L. R. B. No. 62 (1949), the Board seemingly followed its rules. In that decision, it said:

"* * * By Section 9(h) Congress hoped to purge Communists from the labor movement * * *.

"* * * Nor do we believe that the Union's subsequent compliance cured the effects of it's non-compliance which existed at the time of its request to bargain. *The Act does not state, nor may it be implied that the Board should give retroactive effect to the Union's compliance.* * * * *We do not believe that Congress intended the Board to extend retroactive protection to those organizations, which have thus thwarted an established public policy.*" (Emphasis added.)

(60 Stat. 237, 5 U. S. C. Sec. 1001, *et seq.*),[16] and that on that ground alone this Court should order the complaint dismissed.

By reason of its violation of Section 9(h), Respondents contend that the Board's proceeding herein was invalid and unlawful from the very beginning, and that all orders of the Board based upon these proceedings should be declared null and void. Further, Respondents respectfully submit that by its violation of the Administrative Procedure Act, all phases of the proceeding are invalid for this additional reason, and should be declared a nullity.[17]

The Board's explanation of its failure to follow its own rules is without merit. It states that the provisions of these regulations describing the time when a union must be in compliance are provided only for purposes of those regulations. The Board then states, in effect, that despite

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[16] Section 3(a) of the Administrative Procedure Act provides in part, as follows:

> "Every agency shall separately state and currently publish in the Federal Register . . . (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations . . . *No person shall in any manner be required to resort to* organization or procedure not so published." (Emphasis added.) 5 U. S. C. § 1002(a)

The effect of Section 3 is to establish the publication requirement as a condition precedent to use by an administrative agency of procedures required to be published. By instituting the proceeding here in direct violation of its published rules, the Board acted without authority with the result that its complaint and order are invalid.

Section 10(e) of the Administrative Procedure Act, relating to scope of review, provides in part a reviewing court shall:

> " * * * (B) hold unlawful and set aside agency action, findings and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; * * * (4) without observance of procedure required by law; * * * ".

[17] See footnote 16, *supra*.

its disregard of its own rules, the procedures followed by it accomplish the same results as if the rules were followed. It claims that as a general rule, charges and petitions filed by non-complying unions are dismissed within ten days after filing unless the union is then in compliance. Thus, it alleges that non-complying unions do not derive any benefits under the Act even though their petitions or charges are accepted by the Board.

We are without knowledge of the practices followed by the Board in the situations described. In the instant case the charges were not dismissed at the expiration of the ten-day period. Here the union did receive the benefit of a full Board investigation and succeeded in involving Respondents in legal proceedings with the Board. While the record in this case does not reveal what, if any, efforts were made by the Board to obtain voluntary reinstatement of the two discharged employees, we believe this Court can take notice of the fact that the Board does seek to settle cases before issuance of formal complaints and that these settlements do frequently benefit the union filing the charges. (Cf. Bd. br. p. 12 footnote 6). In any event, the Board's explanation cannot excuse its failure to comply with its own published rules nor can it validate proceedings not authorized by law.

IV

Judicial Determination Respecting Section 9(h) Are Not at Variance With the Court of Appeals Decision in the Instant Case, But are Fully and Consistently in Accord With That Decision

In several instances Federal courts have considered and decided the application of Section 9(h) in particular factual situations. Until recently, however, only a few of the decisions have been concerned *primarily* with the specific problem before the Court in this case. It is the respectful contention of Respondents, nevertheless, that the decision of this Court in *National Labor Relations Board* v. *Highland Park Manufacturing Company*, (341 U. S. 322, 95 L.

ed. 969) has effectively settled the questions of (1) whether a union not in compliance with Section 9(h) is empowered to file a valid charge, and (2) whether the Board is empowered to process such a charge after it is received. Decisions of several Circuit Courts of Appeal fully support this view.

In the *Highland Park* case, this Court was confronted with the specific *question of whether an order* of the National Labor Relations Board *was valid and could be enforced since it was based upon a charge filed by an affiliate of the C. I. O. whose international officers had not complied with Section 9(h) when the charge was filed.*

Without equivocation this Court held that the Board order based upon *such charge* was invalid.

In the course of its opinion, the Court emphasized that the Board's order had been challenged on the ground that the C. I. O. affiliate was *disabled from filing a valid charge* by reason of Section 9(h) and that this same section of the Act precluded the Board from entertaining the charge and from entering an order pursuant to a formal Board complaint based on the charge.

The Court said:

> "The order was challenged upon the grounds, among others, that the failure of the C. I. O. officers to file non-Communist affidavits *disabled its affiliate, the Textile Workers Union,* and the Board could not entertain *their complaint* and enter the order." (Emphasis added).

There can be no question but that the challenge to the validity of the Board's order was directed, in basic part, to the validity of the very *charge* (called "complaint" in the decision) *which started and was an integral part* of the Board's proceeding.

It might be noted here that the Board has frequently used the technical term "charge" to identify a *complaint* from a union or otherwise that unfair labor practices had been or were being committed. Further, the Board has

designated as a "complaint" the formal *charge* prepared by the General Counsel alleging that unfair labor practices had been or were being committed. In view of these technical Board usages, the Board now seeks to convince this Court that the question involved in the instant case is novel.

Respondents contend that the decision of this Court in the *Highland Park* case, *supra*, establishes beyond question that an affiliate of a non-complying national or international union cannot file a valid *charge*, as this term is used in Board parlance, even though this Court in its decision used the term "complaint" to identify a "charge" as the Board has used that term.

In the above quotation from the *Highland Park* decision, it is clear, we submit, that this Court, in using the term "complaint", referred to the "complaint" [charge] of the union; not the *formal complaint* of the Board, which *might constitute* a "complaint" in the Board's restricted terminology. If, as we contend, the Board is precluded by Section 9(h), as construed by this Court in the *Highland Park* decision, from entertaining a union "complaint" [*charge*] because of the disability of the filing union, the Board cannot acquire power to process such a charge under its technical definitions of "complaint" and "charge".

That this Court was not seeking to follow the restricted terminology of the Board in arriving at its *Highland Park* decision is supported by the following excerpt from that decision:

> "The general counsel of the Board had ruled that the Board could not entertain a *complaint* under these circumstances but the Board, with one member dissenting, overruled him, for reasons stated in Re Northern Virginia Broadcasters, Inc., 75 NLRB 11. The Court of Appeals for the District of Columbia Circuit reached the same conclusion as the Board in West Texas Utilities Co. v. National Labor Relations Board; 87 App. D. C. —, 184 F. 2d 233. The Court of Appeals for the Fourth Circuit in this case, 184 F. 2d 98, and the Court

of Appeals for the Fifth Circuit in the National Labor Relations Board v. Postex Cotton Mills, Inc., 181 F. 2d 919, arrived at a contrary result, *holding that the Board could not entertain the complaint.* The conflicting results are each so well-considered and so thoroughly documented in opinions already appearing in the books that little could be added to either. We agree with the conclusions of the Fourth and Fifth Circuits.". (Emphasis added).

The United States Court of Appeals for the Fifth Circuit in *National Labor Relations Board* v. *Postex Cotton Mills* (1950), (181 F. (2d) 919 at 919-920), said:

> "There is no dispute between the parties as to Congressional purpose. It is conceded that the evil of Communist influence upon labor organizations was sought to be remedied by *denying the benefits provided by the Act* . . . to unions having Communist officers . . . . We think the language of the statute, considered in the light of Congressional purpose, the evil to be remedied, and the means provided to effectuate that purpose, evidences Congressional intent to wholly eradicate and bar from leadership in the American labor movement, at each and every level, adherents to the Communist party and believers in the unconstitutional overthrow of our Government." (Emphasis added.)

The Court's attention is respectfully directed to the fact that its decision in the *Highland Park* case, *supra,* not only expressed complete agreement with the Circuit Court's opinion in the *Postex* case, *supra,* but this Court also explicitly overruled the decision of the United States Court of Appeals for the District of Columbia in the case of *West Texas Utilities* v. *National Labor Relations Board* (184 F. (2d) 233). In this latter case, the Court of Appeals erroneously concluded that compliance by officers of IBEW when the charge was filed removed the *statutory disability* attached to it as an affiliate of the American Federation of Labor because the officers of the AFL were not then in

compliance with Section 9(h).[18] In addition the Court expressly adopted the conclusions of the Court of Appeals in *N.L.R.B.* v. *Highland Park Manufacturing Co.* (C.A. 4, (1950) 184 F. (2d) 98).

By its decision of agreement with the conclusions of the Fourth and Fifth Circuit Courts of Appeal, this Court ruled, it is submitted, that a *valid charge* cannot be filed by an affiliate of a non-complying "labor organization", and that the Board is precluded by Section 9(h) of the Act from entertaining or processing a charge received from a non-complying "labor organization". This is established by the Court's summation of its decision when it said:

> "*It would be strange indeed if the courts were compelled to enforce without inquiry an order which could only result from proceedings that, under the admitted facts, the Board was forbidden to conduct. The Board is a statutory agency and, when it is forbidden to investigate or entertain complaints in certain circumstances, its final order could hardly be valid.* We think the contention is without merit and that an issue of law of this kind, which goes to the heart of the validity of the proceedings on which the order is based, is open to inquiry by the courts when they are asked to lend their enforcement powers to an administrative tribunal." (Emphasis added).[19]

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[18] The error of the Court of Appeals for the District of Columbia in the *West Texas Utilities* case, *supra*, as to the necessity for compliance by the A. F. L., did not affect that Court's recognition of the requirements of Section 9(h) that a union cannot initiate Board proceedings unless non-Communist affidavits are filed contemporaneously with the *union's charge*, or within the preceding 12-month period. That Court said:

> ". . . the Act's only sanction for non-compliance is denial of Board facilities. Thus, if an unfair labor practice is committed by an employer, the union *may not seek Board aid* to compel him to cease and desist *unless there is on file with the Board an affidavit executed contemporaneously* or within the preceding twelve month period . . ." (Emphasis added.)

[19] In an earlier decision of this Court, Mr. Justice Frankfurter stated clearly that Section 9(h) precludes non-complying unions

Earlier in this brief, attention has been called to the fact that the Board itself, in its Rules and Regulations has construed the Act as requiring the execution of non-Communist affidavits "*contemporaneously with the charge* . . . or within the preceding twelve month period." These Rules, we submit, properly interpret Section 9(h) of the Act, and we further submit that it "would be strange indeed if the courts were compelled to enforce . . . an order which could only result from proceedings that . . . the Board was forbidden to conduct" (a) under the statute, (b) under its own Rules and Regulations, and (c) under the decision of this Court in the *Highland Park* case, *supra*.

Clearly the Court of Appeals for the Fourth Circuit in *NLRB* v. *Highland Park, supra,* determined that compliance with the requirements of Section 9(h) must exist at the time the charging union seeks to invoke the Board's assistance.

That Court said:

> "We find no ambiguity in the language of the governing statute. On the contrary it provides as clearly

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from having any advantages under the Act. In *Communications Association* v. *Douds*, 339 U. S. 382, at pp. 416-418, he stated:

> "The central problem presented by the enactment now challenged is the power of Congress, as part of its comprehensive scheme for industrial peace, to keep Communists out of controlling positions in labor unions *as a condition to utilizing the opportunities afforded by the National Labor Relations Act*, as amended by the Labor Management Relations Act, 1947 . . . The essential question now is whether Congress may determine that membership of union officers in the Communist Party creates such an obvious hazard to the peace promoting purposes of the Act that *access to the machinery of the Act may be denied unions* which prefer their freedom to have officers who are Communists for me to say that the judgment of Congress that trade unions which are guided by officers who are committed by ties of membership of the Communist Party *must forego the advantages of the Labor Management Relations Act* is reasonably related to the accomplishment of the purposes which Congress constitutionally had a right to pursue." (Emphasis added.)

as language can that *the power of the Board may not be invoked by a labor organization unless there is on file the affidavit which the statute requires* * * *

"We see no reason to emasculate the statute by resorting to forced rules of interpretation when its language is perfectly clear and gives unqualified support to the purpose which Congress had in mind." (Emphasis added).

The Fifth Circuit Court of Appeals in *NLRB* v. *Postex Cotton Mills, supra,* reached the same conclusion. It stated:

"The other (National Labor Relations Act) imposes a restriction upon an agency provided and maintained by the government and directs that the benefits provided *shall be withheld from those who do not comply.*

"* * * The provision is pertinent though, as illustrative that Sec. 9(h) evidences no novelty in expression of congressional intent to prevent any governmental department *from being used, directly or indirectly,* to promote or sustain any organization or person who believes in the overthrow of the government of the United States by unconstitutional means." (Emphasis added).

Respondents' construction of this Court's decision in the *Highland Park* case, *supra,* is strongly supported by the decision of the U. S. Court of Appeals for the Third Circuit in the case of *NLRB* v. *Nina Dye Works, Inc.,* July 24, 1952 (198 F. 2d 363).

In the *Nina Dye* case, the Court of Appeals refused to enforce an NLRB order because the C.I.O. had not filed the documents and affidavits required by Sections 9(f), (g) and (h) of the Act until after the unfair labor practice charges were filed by a complying affiliate. After noting that the Board's action *in entertaining the charge and issuing a complaint* was "directly contrary to its own regulations", the Court of Appeals said:

"In the one reported United States Court of Appeals decision squarely in point, the Ninth Circuit held that

where the necessary non-Communist affidavits of the officers of the parent national labor organization were not on file when the particular charge was made by the affiliated local union, '* * * the Board was not empowered to entertain the charge or to issue the complaint or the order.' National Labor Relations Board v. Dant, et al., 195 F. 2d 299, 300. While the exact situation has not been passed upon to date by the Supreme Court, that Court in National Labor Relations Board v. Highland Park Manufacturing Co., 341 U. S. 322, strongly upheld the provision of section 9(h) calling for the officers of the national union with whom the charging local was affiliated to file non-Communist affidavits.

"The Fourth Circuit decision which had been affirmed in the above referred to opinion stated, 'we find no ambiguity in the language of the governing statute. On the contrary it provides as clearly as language can that *the power of the Board may not be invoked* by a labor organization unless there is on file the affidavits which the statute requires executed * * *.' 184 F. 2d 98, 99. (Emphasis supplied) And see National Labor Relations Board v. Postex Cotton Mills, Inc., 5 Cir. 181 F. 2d 919.

"We find no real support for the Board's present position in the citations submitted on behalf of that body. Nor do we think that there is anything helpful, as is urged, to the Board's attempted construction of 9(h) in Senator Taft's 'Supplemental Analysis of Labor Bill (Taft-Hartley Act) as passed.' Legislative History of the Labor Management Relations Act, 1947, Vol. II, p. 1625. The Senator did say that the purpose of 9(h) was to make the filing of the non-Communist affidavits '* * * a condition precedent to use of the processes of the Board * * *' but it can hardly be inferred from this that in the Senator's opinion the charge, without which no complaint can be issued, is not to be considered part of the processes of the Board. Congressman Hartley, jointly responsible with Senator Taft for the 1947 Labor Management Relations Act, left no doubt as to the meaning of 9(h) when he said:

" 'Lest there be any doubt as to what we meant when

we wrote that Section, I want to put down here exactly what I had in mind and also report that not a single member of the House Labor Committee or the Joint House-Senate Conference Committee ever indicated that it meant anything else.

"'I meant that no local union could petition for an election or file an unfair labor practice charge unless the officers of that local and the officers of the international union and the officers of whichever of the two major labor organizations the international was affiliated with, had filed non-Communist affidavits.' Hartley: 'Our New National Labor Policy', Funk & Wagnalls Company, page 162.'"

"From the wording of the statute, the construction placed upon it by the Board in its Regulation 102.13, its legislative history and the trend of the pertinent decisions, we are entirely satisfied that the Dant case was correctly decided. Therefore we hold that in this matter the Board was without jurisdiction to issue its complaint."

The U. S. Court of Appeals for the Fifth Circuit in *NLRB* v. *The American Thread Company* (198 F. (2d) 137), July 31, 1952, reached the same conclusion under similar facts. That Court said:

"In resisting enforcement of the order respondent urges that enforcement should be denied because at the time the original and amended charges were filed against it the Congress of Industrial Organizations had not complied with section 9(h) of the Act, 29 U. S. C. A. Sec. 159 (h) and that therefore the complaint issued on the basis of such charges was issued in violation of that section of the Act. The Congress of Industrial Organizations did comply with Section 9(h) supra, in December, 1949, before the complaint was issued. The respondent contends that such compliance did not have the retroactive effect of validating the charges or empowering the Board to entertain them, or to issue the complaint or order. NLRB v. Dant, 195 F. 2d 299.

"In NLRB v. Dant, *supra*, the Court of Appeals for the Ninth Circuit, under a similar factual situation,

held that a charge made by a labor organization at a time when the Congress of Industrial Organizations, of which it was an affiliate, was not in compliance with subsection (h) of section 9, *supra*, could not be made the predicate for the issuance of a complaint by the Board, although the Congress of Industrial Organizations complied with the requirements of that subsection prior to the date of issuance of the complaint. The Board contends that the decision is unprecedented and that this construction is contrary to a "spontaneous textual reading" of the statute. In NLRB v. Postex Cotton Mills, 181 F. 2d 919, this Court had occasion to consider the purpose of Congress in enacting the statute in question and concluded that it was with the intent to 'wholly eradicate and bar from leadership in the American Labor movement at each and every level, adherents to the Communist party and believers in the unconstitutional overthrow of our Government.'

"The Board argues that the statute should be construed to place a limitation upon its power to issue a complaint in cases where a charge has been filed by a non-complying labor organization and not to disqualify a non-complying labor organization from filing charges. But the broad purpose of the Act covers both situations. *The statute withdraws from its creature, the Board, the power to employ its processes in aid of a non-complying union, and likewise evidences the clear purpose to disentitle and exclude such non-complying union from setting in motion the processes of the Board.* Both of these results are necessary to insure complete effectuation of the Congressional intent. *Congress intended to remove from the protection of the Act those labor organizations which could not, or would not, bring themselves into compliance and thereby withheld from such organizations not only the processes of the Board, but also the benefits of the Act.* NLRB v. Postex Cotton Mills, supra; NLRB v. Case Co., 189 F. 2d 599. Inasmuch as the charges were filed at a time when the union was not in compliance and since the subsequent compliance had no retroactive effect to give legal substance to the charges, or empower the Board to issue the complaint, the order of the Board is un-

authorized and cannot be enforced. NLRB v. Dant, *supra*, and cases cited.". (Emphasis added).[20]

Within a few days after this Court granted the Board's Petition for a Writ of Certiorari in the case at bar, the United States Court of Appeals for the Sixth Circuit decided the case of *NLRB* v. *Tennessee Egg Company*, October 17, 1952 (.... F. 2d ...., 30 LRRM 2737). Consistent with the rulings of other Courts of Appeal, the Court of Appeal for the Sixth Circuit expressly ruled that Section 9(h) of the Act deprives the Board of Authority to in any way process a union charge filed at a time when the union was not in compliance with the filing requirements of the Act. That Court said:

> "*Subsections (f), (g) and (h) of section 159, Title 29, U.S.C.A., forbid investigation by the Board in any matter where there has been a failure by the complaining union to file* its constitution, by-laws; *and required* reports and *affidavits* showing that its officers are free from communistic party affiliation or belief." (Emphasis added).

It is significant, we submit, that as in the case at bar, the Board apparently advanced a "literal language" argument to sustain its contention that the requirements of Section 9(h) are met if the union is in compliance when the Board's *formal complaint* is issued, notwithstanding a non-compliance status when the union *charge* is filed with the Board. The Circuit Court of Appeals answered that argument as follows:

> "In reply to the 'literal language' argument of the Board against denial of enforcement of its order in the instant case, the doctrine of United States v. Amer. Trucking Ass'n, 310 U. S. 534, 543, should be applied. There, the Supreme Court said in effect, that, when-

[20] For additional decisions holding that compliance cannot be made retroactive, and validate a charge filed by a non-complying union, see *N. L. R. B.* v. *Clark Shoe Co.*, C. A. 1, (1951) 189 F. (2d) 731 at 732, and *N. L. R. B.* v. *J. I. Case Co.*, C. A. 8 (1951), 189 F. (2d) 599.

ever acceptance of the literal meaning of words in a statute leads to absurd or futile results plainly at variance with the policy of the legislation, courts should follow and apply the legislative purpose. *Here, the mere fact that the language of the Act simply denies the proeesses of the Labor Board to unions whose officers have failed to comply with section 9(h)* [29 U. S. C. A. 159(h)] does not indicate that a union, in a status of non-compliance when the acts of which it complains were committed by the employer, may retroactively cure the defect of its non-compliance status by filing the required affidavits at the time the aid of the Labor Board is invoked.

"The opinion of this court in National Labor Relations Board v. Mylan-Sparta Co., 166 F. 2d 485 [21 LRRM 2368] (C.A. 6), cited by the Board, is, in our opinion, of no aid to the decision in the present controversy: for, in that case, it was merely held that the Labor Management Relations Act of 1947 is prospective, not retroactive, in its effect." (Emphasis added).[21]

In the statements of this Court, and the statements of the various Circuit Courts of Appeal hereinabove quoted,

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[21] In *United States of America* v. *Anthony Valenti*, 106 F. Supp. 121, the United States District Court for the District of New Jersey, in a criminal case involving a union officer charged with wilfully falsifying a non-Communist affidavit, it was stated in part as follows:

"In order to have a clearer understanding of the picture one must understand that the form referred to in the indictment (Form NLRB-1081) was *required to be filed by officers of unions seeking aid* from the National Labor Relations Board under the provisions of the Taft-Hartley Act * * *

"It should be noted, that in adopting this Section, Congress * * * left no room, and afforded no occasion for speculation or conjecture, in reasonable minds, as to the sanctions, both criminal and civil, annexed to the statutory provisions.

"It must be borne in mind that the form filed here was not required of everyone or even anyone under threat of sanctions, either criminal or civil. It was a voluntary filing *on the part of those individuals who sought to place the unions they represented in a special class, and thereby secure the protection and administrative processes of the governmental agency, the National Labor Relations Board.*" (Emphasis added.)

there is no deviation from the proposition that Section 9(h), requires that non-Communist affidavits must be on file before a union may "invoke" the processes of the Board. There can be no question but that the filing of a charge is designed to invoke the processes of the Act; in fact, the filing of such a charge constitutes the first step of such processes. As this Court emphasized in the *Highland Park* decision, *supra, if the charge is invalid because of non-compliance, then all the processes are invalid, and any Board order is likewise invalid.*

This interpretation of Section 9(h) was adopted by the Ninth Circuit Court of Appeals in the instant case, and has since been adopted by other United States Courts of Appeal as hereinabove shown.

In view of the language of Section 9(h), its undisputed legislative history, the construction of the Section in the Rules and Regulations of the National Labor Relations Board, and the earlier decisions of this Court and of various Circuit Courts of Appeal, we submit that no other interpretation of Section 9(h) is warranted.

V

CONCLUSION

In conclusion, Respondents respectfully submit that the decision of the Court below should be affirmed for the reasons that:

(1) The Circuit Court of Appeals has properly construed the language of Section 9(h) in the instant case;

(2) The decision of the Circuit Court of Appeals is fully supported by the legislative history of Section 9(h);

(3) The Board's action in the instant case was unauthorized by the National Labor Relations Act, as amended, *supra,* and was taken in direct violation of the Administrative Procedure Act;

(4) The decision of the Court below conforms with the decision of this Court in the *Highland Park* case, *supra*, and is in complete harmony with decisions of other Courts of Appeal, and

(5) The questions raised by the case at bar have already been settled by this Court in its *Highland Park* decision, *supra*.

Respectfully submitted,

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APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, 151, *et seq.*), are as follows:

"SEC. 9. * * *

* * * * *

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

* * * * *

"(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9(a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to

authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

* * * * *

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9(e)(1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

"(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f)(A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f)(B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9(e)(1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9(e)(1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

* * * * * *

"SEC. 10. * * *

* * * * * *

"(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. * * *

* * * * * *

"(e) * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, Secs. 346 and 347).

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OCTOBER TERM, 1952

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

vs.

THOMAS W. DANT, ET AL., Copartners, DBA DANT & RUSSELL, LTD.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief of Amici Curiae

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In the Supreme Court of the United States

OCTOBER TERM, 1952

NATIONAL LABOR RELATIONS BOARD, *Petitioner* vs. THOMAS W. DANT, ET AL., Copartners, DBA DANT & RUSSELL, LTD.	No. 97

Brief of Amici Curiae

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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I. AUTHORITY FOR SUBMISSION OF THIS BRIEF—INTEREST OF AMICI CURIAE

This brief is submitted under the authority of Section 9(a) of Supreme Court Rule 27, 28 U.S.C., all parties to this case having given their consent thereto in writing.

Each of these amici curiae is at present a party to a judicial or National Labor Relations Board (hereinafter referred to as the "Board") proceeding involving the precise issue which is before this Court herein. The status of their respective cases is as follows:

1. **THE AMERICAN THREAD COMPANY, Tallapoosa, Georgia.**

On July 31, 1952, the United States Court of Appeals for the Fifth Circuit denied the Board's petition for enforcement in a case against this Company and set aside the Board's order. *National Labor Relations Board v. The American Thread Company,* 198 F.(2d) 137. Counsel for The American Thread Company has received a notice from the Solicitor General's office to the effect that the Solicitor General intends to file a petition for certiorari in this case and that the Solicitor General has obtained from Mr. Justice Black an order extending to November 21, 1952, the time within which so to petition for certiorari.

2. **NINA DYE WORKS CO., INC., York, Pennsylvania.**

On July 24, 1952, the United States Court of Appeals for the Third Circuit denied the Board's petition for enforcement in a case against this Company and set aside the Board's order, *National Labor Relations Board v. Nina Dye Works Co., Inc.,* 198 F.(2d) 362. On October 16, 1952, Mr. Justice Burton granted the Board an extension of time to November 21, 1952, within which to file a petition for certiorari.

3. **JACK SMITH BEVERAGES, INC., Jackson, Michigan.**

A case against this Company is presently pending in the United States Court of Appeals for the Sixth Circuit on a petition for enforcement of the Board's order. *National Labor Relations Board v. Jack Smith Beverages, Inc.,* Case No. 11493. The case has been submitted to the said court, oral argument therein having been had on October 9, 1952.

4. EDWARDS BROTHERS, INC., Ann Arbor, Michigan.

A case against this Company is presently pending in the United States Court of Appeals for the Sixth Circuit on a petition for enforcement of the Board's order. *National Labor Relations Board v. Edwards Brothers, Inc.*, Case No. 11635. The Record in the case is ready for printing but by stipulation between the attorneys for Edwards Brothers, Inc. and the General Counsel of the Board (hereinafter referred to as the "General Counsel"), the printing is being deferred pending a decision by the said court in *National Labor Relations Board v. Jack Smith Beverages, Inc.*, supra, page 2.

5. RUBIN BROTHERS FOOTWEAR, INC., Waycross, Georgia.

A case against this Company is presently pending in the United States Court of Appeals for the Fifth Circuit on a petition by Rubin Brothers to review an enforcement order of the Board and a cross petition by the Board for enforcement of its order. *National Labor Relations Board v. Rubin Brothers Footwear, Inc., et al.* Oral argument is scheduled before the said court in this case for about January 1, 1953.

6. I.B.S. MANUFACTURING COMPANY, New Albany, Mississippi.

A proceeding against this Company is presently pending before the Board. *I.B.S. Manufacturing Company, et al.*, Case No. 32-CA-71. A decision and order against the said Company were issued by the Board on November 2, 1951 (96 N.L.R.B. No. 200), but the Company has refused to comply with the Board's order. No petition for enforcement by the Board has been filed.

7. MAGEE CARPET COMPANY, Bloomsburg, Pennsylvania.

A proceeding against this Company is presently pending before the Board. *Magee Carpet Company,* Case No. 4-CA-178. The Board's initial complaint in this case was dismissed by the Board following this Court's decision in *National Labor Relations Board v. Highland Park Manufacturing Company* (1951), 341 U.S. 322, and also following the remand of Magee Carpet Company's case to the Board, on the Board's motion, from the United States Court of Appeals for the Third Circuit, where the case had been pending on the Board's petition for enforcement. *National Labor Relations Board v. Magee Carpet Company* (1951), 189 F.(2d) 259. The Board thereafter issued a second complaint and the Company moved to dismiss. The Board denied such motion on July 29, 1952, and the Company has filed with the Board a Petition for Reconsideration of such denial, which petition is presently pending before the Board.

8. SHELL CHEMICAL CORPORATION, Martinez, California.

A proceeding against this Company is presently pending before the Board. *Shell Chemical Corporation,* Case No. 20-CA-151. The initial complaint by the Board in this case was dismissed by the Board following this Court's decision in the *Highland Park* case, supra. Thereafter, the Board issued a second complaint and the Company moved to dismiss. The Board denied such motion on July 29, 1952, and there is presently pending before the Board a Motion for Reconsideration—Stay of Proceedings, filed by the Company, addressed to such denial of the Company's motion.

II. HISTORY OF THE CASE—OPINIONS BELOW

This matter arises upon a writ of certiorari issued by this Court, on the petition of the Board, to the United States Court of Appeals for the Ninth Circuit to review the decision of that court in the case of *National Labor Relations Board v. Dant, et al.* (1952), 195 F.(2d) 299. The Court of Appeals set aside an order issued by the Board, 92 N.L.R.B. 307 (motion for reconsideration denied, 95 N.L.R.B. No. 44), against Thomas W. Dant, et al., a copartnership doing business as Dant & Russell, Ltd. (hereinafter referred to as the "Respondent"), pursuant to a complaint issued by the General Counsel on March 27, 1950. The charge upon which the complaint was predicated was filed by the International Woodworkers of America, Local 6-7, C.I.O. (hereinafter referred to as the "Union"), on August 3, 1949.

The Congress of Industrial Organizations (hereinafter referred to as the "C.I.O."), a labor organization with which the Union was at all material times affiliated, did not comply with the filing requirements of Sections 9(f), (g) and (h)[1] of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C. (Supp. III) § 141, et seq. (hereinafter referred to as the "Act"), until December 22, 1949.[2] Consequently, the

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[1]The texts of these Sections and other relevant Sections of the Act are set out in the Appendix hereof. References, unless otherwise noted, are to the Act as effective at the time the charge herein was filed.

[2]These amici curiae request this Court to take judicial notice of this fact, which is shown, for example, by General Counsel's Exhibit 14, received in evidence in the matter of *Shell Chemical Corporation and Oil Workers International Union, C.I.O., Local No. 5*, supra, page 4, now pending before the Board and involving the issue of this case, wherein the General Counsel has so stipulated as follows:

> "The Congress of Industrial Organizations, a labor organization of which the Union was at all times material herein

Union was not in compliance at the time it filed the charge. *National Labor Relations Board v. Highland Park Manufacturing Company*, supra, page 4. The Court of Appeals held that under these circumstances the Board was without authority to entertain the charge or to issue a complaint or order pursuant thereto, and, accordingly, set the Board's order aside.

III. THE ISSUE AND POSITION OF AMICI CURIAE WITH RESPECT THERETO

The question presented herein is whether the Board's order against the Respondent, predicated on a complaint issued by the General Counsel pursuant to a charge filed by the Union at a time when it was not in compliance with the filing requirements of Section 9(h)[3] of the Act, was valid where the Union came into compliance prior to the time of the issuance of the complaint. These amici curiae take the position that such charge was without any effect or validity whatsoever, that the General Counsel had no authority to issue a complaint based thereon, and that the order issued by the Board on the basis of such a complaint was a nullity and was properly set aside by the Court of Appeals.

IV. SUMMARY OF ARGUMENT

A. Sections 9(f), (g) and (h) of the Act establish certain requirements with which a labor organization and all of its constituent and affiliated units must comply. The Union

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an affiliate or constituent unit, for the first time achieved compliance with the requirements of Section 9(f), (g) and (h) of the National Labor Relations Act, as amended, hereinafter called the Act, on December 22, 1949, and has remained in compliance therewith at all times thereafter."

[3] The Union also was not in compliance with Sections 9(f) and (g) of the Act, supra, Note 2, page 5.

was not in compliance with these Sections when it filed the charge herein. These amici curiae will show from an examination of the language of the Act, the legislative history thereof, the Rules and Regulations and Statements of Procedure of the Board and the interpretation thereof by the General Counsel, and relevant judicial decisions that the charge filed by the Union was, therefore, wholly without effect, and that the complaint and order issued pursuant to such charge are invalid.

B. Further, whatever the requirements of the Act may be, the Rules and Regulations and Statements of Procedure promulgated by the Board require compliance with the filing requirements of the Act as a condition precedent to the filing by a union of an unfair labor practice charge. Consequently, the entertaining of the charge filed by the noncomplying Union and the issuance of the complaint and order pursuant thereto, in contravening the Board's established procedure of dismissing such a charge, has resulted in a violation of the Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. § 1001, et seq., and the Board has thus exceeded its jurisdiction. The complaint and order issued pursuant to such charge are therefore invalid.

C. Finally, since the Rules and Regulations and Statements of Procedure promulgated by the Board and the practices followed by the General Counsel thereunder require compliance with the filing requirements of the Act as a condition precedent to the filing by a union of an unfair labor practice charge, the entertaining of the charge filed by the noncomplying Union and the issuance of the complaint and order pursuant thereto, in contravening the Board's established procedure and practice of dismissing such a charge, has resulted in a discrimination against the Re-

spondent in violation of the Fifth Amendment of the United States Constitution, and the Board has thus exceeded its jurisdiction. The complaint and order issued pursuant to such charge are therefore invalid.

V. ARGUMENT

A. The Complaint and Order Issued Against the Respondent Are Invalid Since No Valid Charge Has Ever Been Filed Herein.

1. THE FILING OF A CHARGE IS A CONDITION PRECEDENT TO BOARD ACTION.

It is well established that the Board lacks jurisdiction to issue a complaint or order with respect to alleged unfair labor practices unless a valid charge has been filed. *National Labor Relations Board v. Indiana and Michigan Electric Company* (1943), 318 U.S. 9; *National Labor Relations Board v. Kobritz* (1st Cir., 1951), 193 F.(2d) 8; *Consumers Power Company v. National Labor Relations Board* (6th Cir., 1940), 113 F.(2d) 38. Accordingly, the complaint and order herein are invalid unless they were issued pursuant to a valid charge.

2. SECTIONS 9(f), (g) AND (h) OF THE ACT PROHIBIT THE FILING OF CHARGES BY NONCOMPLYING UNIONS.

While the charge which initiated this proceeding was filed on August 3, 1949, the charging Union did not, until December 22, 1949, come into compliance with the filing requirements of Sections 9(f), (g) and (h) of the Act, all of which have a common legislative history, were intended to have the same consequences and should be construed together. It is submitted for the reasons hereinafter set forth that this noncompliance status of the charging Union at the time the charge was filed prevented the charge from being valid for any purpose and that, therefore, the order issued by the Board pursuant to the complaint predicated on such charge was properly set aside by the Court of Appeals.

a. The Language of the Act Requires Compliance as a Prerequisite to the Filing of a Charge.

Section 9(f) of the Act requires the filing by all labor organizations and their affiliate and constituent units of certain data relative to the organization and financial affairs of the union. Section 9(g) requires that the material filed under 9(f) be kept current and furnished annually to members of the union. Section 9(h) requires that non-Communist affidavits be filed and kept current.

The operative language of these Sections relating to unfair labor practices is as follows:

9(f):

> "... no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have *prior thereto filed* [certain material] and (B) can show that *prior thereto* it has *performed* [certain acts]."

9(g):

> "... no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit *has complied with its obligation* under this subsection."

9(h):

> "... no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10 unless there is *on file* with the Board an affidavit *executed contemporaneously* or within the preceding twelve-month period by each officer ..." (Emphasis added.)

The only reasonable meaning that can be drawn from the language of these Sections is that, in order for a charge to be valid, compliance of the charging union must be effectuated not later than the time of filing the charge. That such was clearly the intention of Congress, if any uncertainty can be found in these Sections, will be conclusively demonstrated by the consideration of the legislative history of these Sections hereinafter set forth. Considering the language of the Act itself, however, to interpret "prior thereto", "has complied" and "contemporaneously" in Sections 9(f), (g) and (h), respectively, as relating to the time of filing the charge establishes a logical and understandable construction of these Sections, while to interpret these phrases as relating to the time of issuance of the complaint produces a wholly impractical and unlikely construction. Adoption of the latter construction would result in a prodigal waste of the efforts and resources of the Board in the investigation of charges filed by noncomplying unions, regardless of the statutory prohibition against issuing a complaint on the basis of such charges so long as the status of noncompliance of the charging union continues. Adoption of the former interpretation, on the other hand, eliminates this consequence.

Efforts to apply the interpretation here contended for by the Board to the language used by Congress in these Sections result in further incongruities. For example, to interpret "contemporaneously" in Section 9(h) as relating to the time of issuance of the complaint would make the Section internally inconsistent, for it would then contain an authorization that the affidavits be executed "contemporaneously" with the issuance of the complaint and the clearly inconsistent requirement that the affidavits already be "on

file" at the time of the issuance of the complaint. Furthermore, unless the word "contemporaneously" is read out of the Act, this interpretation would authorize the execution of the affidavits at the time of issuance of the complaint and thus would envisage some such unrealistic procedure of finally effectuating compliance as by the foregathering at a designated place, pursuant to a prearranged plan, of the officers of the noncomplying labor organization and a representative of the General Counsel, with a fully prepared complaint in his possession; for execution by the union officers of the required affidavits contemporaneously with the issuance by the General Counsel of the complaint. Surely Congress, in enacting Section 9(h), did not contemplate such an arrangement.

It is submitted, therefore, that the only reasonable interpretation of the language of the Act is that compliance with Sections 9(f), (g) and (h) is a prerequisite to the filing of a charge, as the Court of Appeals concluded.

b. It Was the Congressional Intent That Compliance Be a Prerequisite to the Filing of a Charge.

The legislative history of Sections 9(f), (g) and (h) of the Act removes any possible doubt that compliance was intended to be a prerequisite to the filing of a charge. With specific reference to the requirements of Sections 9(f) and (g), *House Conference Report No. 510 on H. R. 3020*, 80 Cong., 1st Sess., embracing the text of the Labor Management Relations Act, 1947 (hereinafter referred to as the "Taft-Hartley Act"), was submitted to the House by Congressman Hartley, co-author of the last mentioned Act, and

reported on the outcome of the conference between the Senate and House committees. It contained the following:

> "The conference agreement (sec. 9(f) and (g)) adopts the provisions of the Senate amendment with three changes therein. First, the filing of the information and reports is made a condition of eligibility for requesting a union shop election, *in addition to* eligibility for filing petitions for representation and *eligibility for making charges.* Second, it is provided that not only the particular labor organization *invoking the processes of the act,* but also any national or international labor organization of which it is an affiliate or constituent unit, must file the required information and reports. Third, there are added to the matters with respect to which information must be filed, detailed statements of, or reference to, the provisions of the organization's constitution and bylaws, etc." (Emphasis added.) Bureau of National Affairs, Inc., *The New Labor Law* (1947), p. B-22.

The earlier declarations of the co-authors of the Taft-Hartley Act in the course of Congressional debate thereon were consistently to the same effect. On at least two prior occasions Senator Taft unequivocally explained the nature of the compliance requirement of Section 9(f):

On April 23, 1947, he made the following statement pertaining to 9(f) at 93 Cong. Rec. 3955:[4]

> "Mr. President, the bill provides that unions must file financial reports on forms certified by the Secretary of Labor, and furnish the reports to all their members, and file a copy with the Secretary of Labor . . . .
> *The filing of such report* is a condition of certification

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[4]See also remarks to same effect of Senator Murray, 93 Cong. Rec. 4156 and Senator Thomas, 93 Cong. Rec. 4897.

as a bargaining agent under the law, and *is also a condition of the right to file any charges under the National Labor Relations Act.*" (Emphasis added.)

On June 5, 1947, Senator Taft caused a written analysis relative to various provisions of the Act to be printed in the Congressional Record. The comments therein concerning Sections 9(f) and (g) read as follows (93 Cong. Rec. 6602):

> "Subsection 9(f) and subsection 9(g), requiring [that] labor organizations *as a condition precedent to* being recognized as representatives under section 9 or *being permitted to file charges* under section 10 must file certain information with the Secretary of Labor and furnish certain financial reports to their members, differs from the corresponding subsections in the Senate amendment only with respect to [9](f)(6)." (Emphasis added.)

It is obvious from the similarity of language and purpose that the consequences of failure to comply with Section 9(h), which was drafted subsequent to Sections 9(f) and (g) and in the light of the legislative history thereof, were intended to be identical to the consequences of failure to comply with Sections 9(f) and (g). That Congress intended compliance with 9(h) to be a condition precedent to the capacity of a labor organization to file an unfair labor practice charge is also illustrated by the following legislative declarations by the co-authors of the Taft-Hartley Act:

On June 4, 1947, Congressman Hartley clearly explained that the purpose of Section 9(h) was to deny access to the Board to noncomplying unions, 93 Cong. Rec. 6540:

> "The bill further *prohibits labor organizations from invoking the processes of the act* unless all of the offi-

cers file affidavits with the board that they are not members of the Communist Party or other subversive organizations." (Emphasis added.)

On June 12, 1947, Senator Taft described the effect of Section 9(h), 93 Cong. Rec. 7002, as follows:

"This provision making the filing of affidavits with respect to Communist Party affiliation by its officers *a condition precedent to use of the processes of the Board* has been criticized as creating endless delays." (Emphasis added.)

It is submitted therefore that compliance with the requirements of Sections 9(f), (g) and (h) of the Act is clearly established by the legislative history of the Act as a prerequisite to the filing of a valid charge by a labor organization.

c. The Board and the General Counsel Have, by Their Regulations, Procedures and Administrative Practices, Recognized That the Validity of a Charge Is Dependent upon Compliance at the Time of Filing the Charge.

From the inception of the Taft-Hartley Act, the Board's administrative regulations and practices thereunder have consistently required compliance with Sections 9(f), (g) and (h) of the Act as of the time a charge is filed. Section 203.13(b) of its Rules and Regulations, Series 5, effective August 23, 1947, and Section 202.3 of its Statements of Procedure, also effective August 23, 1947, first promulgated under the Act, provided as follows:

"203.13 *Compliance with Section 9(f), (g) and (h) of the Act:*

* * * * * * *

(b) For the purpose of these rules and regulations, compliance with section 9(h) of the act means that a national and an international labor organization has on

file with the General Counsel in Washington, D. C., and a local labor organization has on file with the Regional Director in the region in which the proceeding is pending:

(1) *An affidavit* by an authorized representative of the labor organization, under oath, *executed contemporaneously with the charge* or within the preceding 12-month period, listing the titles of all offices . . .

(2) *An affidavit* by each officer referred to in paragraph (1) of this paragraph, *executed contemporaneously with the charge* or within the preceding 12-month period, stating that he is not a member of the Communist party . . ." (Emphasis added.)

"202.3 *Compliance with Section 9(f), (g) and (h) of the Act:*

If the charge is filed by a labor organization, that labor organization must present either *with the charge* or within a reasonable period not to exceed 10 days thereafter[5] (evidence of compliance with 9(f) and (g)). In addition the labor organization and every national or international labor organization of which it is an affiliate or constituent unit must have complied with section 9(h) of the act by filing with the General Counsel of the Board in Washington, D. C., either *with the charge* or within a reasonable period not to exceed 10 days thereafter . . ." (Emphasis added.)

Substantially identical language has appeared in the Board's Rules and Regulations and Statements of Procedure at all

[5]These amici curiae do not, however, concede the validity of the ten-day "grace period" which the Board has thus established in its Statements of Procedure, without authority under the Act, and which is adverted to elsewhere in this brief.

times since the adoption of the foregoing, and now comprises Section 102.13 of Rules and Regulations, Series 6, effective March 1, 1951, and Section 101.3 of Statements of Procedure, also effective March 1, 1951, respectively.

Furthermore, the Board has published a booklet entitled "A Guide for Labor Organizations", of which these amici curiae request this Court to take judicial notice, which describes the steps necessary for a union to come into compliance and remain in compliance with Section 9(h). It also describes the consequences which attach when a complying union fails to properly renew its affidavits upon the election of new officers or within a ten-day period of grace thereafter,[6] as follows (page 11):

> "At the end of this 10-day period, if affidavits have not been received, all matters pending before the Board involving your organization will be subject to immediate dismissal without further notice."

Clearly the same consequences attach to a failure to execute the necessary affidavits in the first instance.

Under these clear rules of procedure the General Counsel has uniformly dismissed charges filed by noncomplying unions where compliance has not been effectuated within the ten-day period following the filing of the charge, or at the expiration of an extension of time granted upon petition by a charging union which demonstrates that it is making a good faith effort to come into compliance.[7]

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[6]See Note 5, supra, page 15.

[7]These amici curiae request this Court to take judicial notice of these procedures as shown, for example, by General Counsel's Ex-

In view of the foregoing, it is manifest that the Board and the General Counsel have, by their regulations, procedures and administrative practices, recognized that the validity of a charge is dependent upon compliance at the time of filing the charge.

d. It Has Been Judicially Determined That Compliance Is a Prerequisite to the Filing of a Charge.

Prior to the erroneous decision of the Board in *Northern Virginia Broadcasters, Inc.*, 75 N.L.R.B. 11, the General Counsel correctly took the position that the C.I.O. was a "labor organization" within the meaning of Sections 9(f), (g) and (h) of the Act. Charges filed by its affiliates were

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hibit 14 received in evidence in the *Shell Chemical* case, supra, page 4, wherein the General Counsel has so stipulated as follows:

> "At all times material herein, from on or about August 22, 1947, up to and including the date hereof [May 12, 1952], the procedure of the General Counsel concerning compliance with the requirements of Section 9(f), (g) and (h) of the Act on the part of labor organizations in filing charges has been as follows:
>
> When a charge was filed by a labor organization not in compliance, the Regional Director gave notice that the charge would be dismissed unless the labor organization had attained compliance within ten days. If the labor organization had not come into compliance within that period, and had not been granted by the Regional Director an extension of time, for good cause shown, within which to comply, the Regional Director would notify the labor organization that he was refusing to take further action for that reason, and the case thereafter was closed, subject to right of appeal to the General Counsel within ten days. A union which had filed a charge and was seeking to complete its compliance might apply for an extension of time within which to comply, and upon a showing of good cause, the Regional Director might grant such an extension."

therefore dismissed for noncompliance.[8] However, in the *Northern Virginia Broadcasters* case the Board held that such organizations as the C.I.O. were not "labor organizations" within the meaning of those Sections. Thereafter, a large number of charges filed by C.I.O. affiliates were processed, although the parent organization did not come into compliance until a much later date.

On May 14, 1951, this Court, in the *Highland Park* case, supra, page 4, overruled the position which the Board had taken in its *Northern Virginia Broadcasters* decision. It held that the C.I.O. was a labor organization within the meaning of the Act and that, since it was not in compliance with Section 9(h) during the pertinent period, its affiliate, the Textile Workers Union of America, was not in compliance. It further held that the order to bargain issued by the Board was invalid, notwithstanding the fact of compliance by the C.I.O. after the issuance of the complaint. As a result of the *Highland Park* decision, the Board dismissed complaints pending before it which had been issued, prior to compliance by the C.I.O., pursuant to charges filed by C.I.O. affiliates during the period of noncompliance.

The Board's issuance, however, after compliance by the C.I.O., of complaints predicated on charges filed by C.I.O. affiliates prior to the time of compliance, led inevitably to judicial determinations as to whether charges filed by noncomplying unions were valid. This question has now been expressly ruled upon in three judicial decisions, all clearly holding that charges so filed are invalid and that complaints and orders issued pursuant thereto are also consequently in-

[8] See Note 7, supra, page 16.

valid. *National Labor Relations Board v. Nina Dye Works Co., Inc.*, supra, page 2; *National Labor Relations Board v. The American Thread Company*, supra, page 2, and the decision herein of the Court of Appeals. These cases are fully considered in the brief of the Respondent in opposition to the petition for writ of certiorari granted herein. It is sufficient here to say that the three Courts of Appeals which have specifically considered this question have been unanimous in sustaining the position argued by these amici curiae. Indeed, these amici curiae further believe that this position is fully sustained by this Court's decision in the *Highland Park* case, which is also discussed at length in the Respondent's brief.

It is difficult to perceive, in the light of all the relevant considerations discussed above and the policies of the Act, how the Courts of Appeals could have come to any other conclusion. The well-defined purpose of Sections 9(f), (g) and (h) of the Act is to eliminate certain abuses in the labor movement by denying the processes of the Board to noncomplying unions. This is particularly exemplified by Section 9(h), the objective of which is to exclude members of the Communist Party from offices in labor organizations by denying the processes of the Board to noncomplying unions. Mr. Justice Frankfurter very aptly described this policy in his concurring opinion in *American Communications Association v. Douds* (1950), 339 U.S. 382, at 416-418, in which he stated:

> "The central problem presented by the enactment now challenged is the power of Congress, as part of its comprehensive scheme for industrial peace, to keep Communists out of controlling positions in labor unions *as a condition to utilizing the opportunities afforded by the National Labor Relations Act*, as amended by the Labor Management Relations Act, 1947

> . . . The essential question now is whether Congress may determine that membership of union officers in the Communist Party creates such an obvious hazard to the peace promoting purposes of the Act that *access to the machinery of the Act may be denied unions* which prefer their freedom to have officers who are Communists to their opportunities under the Act . . . It must suffice for me to say that the judgment of Congress that trade unions which are guided by officers who are committed by ties of membership to the Communist Party *must forego the advantages of the Labor Management Relations Act* is reasonably related to the accomplishment of the purposes which Congress constitutionally had a right to pursue." (Emphasis added.)

Similarly, the United States Court of Appeals for the Fifth Circuit in *National Labor Relations Board v. Postex Cotton Mills* (1950), 181 F.(2d) 919 at 919-920, said at a later date:

> "There is no dispute between the parties as to Congressional purpose. It is conceded that the evil of Communist influence upon labor organizations was sought to be remedied by *denying the benefits provided by the Act*, and especially collective bargaining, to unions having Communist officers . . . We think the language of the statute, considered in the light of Congressional purpose, the evil to be remedied, and the means provided to effectuate that purpose, evidences Congressional intent to wholly eradicate and bar from leadership in the American labor movement, at each and every level, adherents to the Communist party and believers in the unconstitutional overthrow of our Government." (Emphasis added.)

The latter part of this language was quoted with approval by this Court in the *Highland Park* case at page 325.

If the Act were to be construed to authorize the Board to entertain a charge filed by a noncomplying union, as the Board here contends, then the policies underlying Section 9(h), as well as those underlying Sections 9(f) and (g), would be defeated. The processes of the Board, rather than becoming wholly unavailable at the end of the six-month limitation period of Section 10(b) of the Act, would remain in abeyance indefinitely to be called into action at such time as the union saw fit to comply.[9]

In addition to the three decisions noted above involving the specific issue of this case, numerous other cases involving the question of the consequences of noncompliance have confirmed that noncomplying unions are not entitled to invoke the power of the Board in any way. The United States Court of Appeals for the Fourth Circuit said in *N.L.R.B. v. Highland Park Manufacturing Co.* (1950), 184 F.(2d) 98 at 99, affirmed, *National Labor Relations Board v. Highland Park Manufacturing Co.*, supra, page 4:

> "We find no ambiguity in the language of the governing statute. On the contrary it provides as clearly as language can that *the power of the Board may not be invoked by a labor organization unless there is on file the affidavits which the statute requires . . .*" (Emphasis added.)

The United States Court of Appeals for the Fifth Circuit in *National Labor Relations Board v. Postex Mills*, supra, page 20, said at 922:

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[9]Thus, as has in fact occurred in the *Shell Chemical* case, supra, page 4, the acts complained of allegedly occurred on September 7, 1948, the charge was filed on November 17, 1948, the charging union came into compliance on December 22, 1949, and the pending complaint was issued on February 6, 1952.

"The provision is pertinent though, as illustrative that Sec. 9(h) evidences no novelty in expression of congressional intent to prevent any governmental department *from being used directly or indirectly*, to promote or sustain any organization or person who believes in the overthrow of the government of the United States by any unconstitutional means." (Emphasis added.)

In *West Texas Utilities Co. v. National Labor Relations Board* (1950), 184 F.(2d) 233, cert. den. (1951) 341 U.S. 939, petition for rehearing denied (1951) 342 U.S. 843, the United States Court of Appeals for the District of Columbia said, at 239:

"The Act's only sanction for non-compliance is *denial of Board facilities.* Thus, if an unfair labor practice is committed by an employer, the union may not seek Board aid to compel him to cease and desist

'unless there is on file with the Board an affidavit executed *contemporaneously or within the preceding twelve-month period*'

by the officers covered. Since this language specifically contemplates that the requisite affidavits may be filed '*contemporaneously*' with invocation of Board facilities, the unfair practice against which they are invoked obviously must have occurred earlier . . ." (All but first emphasis by the Court.)

The United States Court of Appeals for the First Circuit said in *National Labor Relations Board v. Clark Shoe Co.* (1951), 189 F.(2d) 731 at 732:

"The case of National Labor Relations Board v. Highland Park Mfg. Co., 71 S.Ct. 758, 760, answers quite completely . . . the contentions of the petitioner in this case . . . that 'subsequent compliance of the C.I.O. has cured any defect which may have originally

inhered in the union's capacity to *invoke the Board's aid.*' "[10] (Emphasis added.)

The repeated use of the word "invoke" (Webster's New International Dictionary (2d unabr. ed., 1948): "To call on for aid or protection . . . To appeal to for support.") in the foregoing quotations clearly indicates that the inhibitions of Sections 9(f) (g) and (h) of the Act relate to the filing of the charge, and thus make unavailable to a noncomplying union all of the processes of the Board and not merely the issuance of a complaint.

The entertaining and investigating of a charge and deciding whether to issue a complaint thereon are as much a part of the Board's processes as the issuance of the complaint and proceedings pursuant thereto. The Board itself took the position in the case of *N.L.R.B. v. Wiltse* (6th Cir., 1951), 188 F.(2d) 917, 926, that a charge is a part of the "process . . . of the Board" within the meaning of the Act, and the Court of Appeals agreed with that view.[11] Further, the United States Court of Appeals for the Sixth Circuit

[10]See *National Labor Relations Board v. Alside* (6th Cir., 1951), 192 F.(2d) 678, involving noncompliance at the time of the issuance of the complaint, as well as at the time of filing the charge, but indicating that the invalidity of the proceedings stemmed from the no compliance at the time the charge was filed. See also *National Labor Relations Board v. Red Rock Company* (5th Cir., 1951), 187 F.(2d) 76, 78.

[11]It is also significant to observe that the filing of a valid charge serves to toll the running of the six-month limitation period of Section 10(b) of the Act and thus preserves to the charging union the prospect of future operation of the further processes of the Board which would otherwise be lost absent the filing of a charge within the limitation period. To conclude that this result may flow from the filing of a charge by a noncomplying union would further repudiate the clear policy of the Act to deny the processes of the Board to noncomplying unions.

said in the case of *National Labor Relations Board v. Tennessee Egg Company*, October 17, 1952, Case No. 11465:

> "Subsections (f), (g) and (h) of Section 159, Title 29, U.S.C.A., *forbid investigation by the Board* in any matter where there has been a failure by the complaining union to file its constitution, by-laws and required reports and affidavits showing that its officers are free from communistic party affiliation or belief." (Emphasis added.)

Nor may it be contended that the effectuation of compliance subsequent to the filing of a charge can operate retroactively to give validity to the charge. In the *Highland Park, Postex, Clark Shoe* and *Alside* cases noted above, the decisions were all handed down after the C.I.O., with which the various charging unions were affiliated, had come into compliance on December 22, 1949, yet none of these courts considered the current compliance status of the charging union as significant. As this Court said in the *Highland Park* case, supra, page 4, at 325:

> "While the C.I.O. officers have since filed the affidavits, they were not on file at any time relevant to this proceeding."

In the case of *National Labor Relations Board v. J. I. Case Company* (8th Cir., 1951), 189 F.(2d) 589, the union was out of compliance both when it filed the charge and when the complaint was issued. The Court of Appeals, however, felt that the union's status at the time of issuance of the complaint was so unimportant that it made no mention of it in its opinion, adverting only to the fact of noncompliance at the time the charge was filed. The Court denied enforcement of the Board's order as against

the latter's contention that compliance prior to issuance of the Board order had cured any defects inherent in the proceedings, quoting with approval at page 601 the Board's own comments in the matter of *Isaac Andrews, et al.*, 87 N.L.R.B. 379, as follows:

> "Nor do we believe that the Union's subsequent compliance cured the effects of its non-compliance which existed at the time of its request to bargain. *The Act does not state, nor may it be implied, that the Board should give retroactive effect to the Union's compliance.* Such an interpretation would permit the circumvention of these provisions, for a non-complying labor organization could compel recognition by the mere threat of subsequent compliance and the filing of a charge. Moreover, we would be giving the non-complying union the very remedy which Congress specifically denied it." (Emphasis added.)

The United States Court of Appeals for the Sixth Circuit recently held in the *Tennessee Egg Company* case, supra, page 24, that a refusal to bargain with a union not in compliance with the filing requirements of the Act did not constitute an unfair labor practice where the union subsequently came into compliance and filed an unfair labor practice charge, for to give such retroactive effect to compliance would be to vitiate the policy of the Act, as described above. The Court thus adopted the position which the Board had taken initially in the *Isaac Andrews* case. In discussing the majority opinion in the *Douds* case, supra, page 19, the Court of Appeals said:

> "From our reading of the opinion in entirety, we infer that the highest court considered compliance by a union with Section 9(h) to obtain the benefits granted by the Act to be a necessity; and that the requirement

> of compliance should be strictly enforced to prevent the continuing danger of disruptive strikes instigated by Communists holding positions of union leadership. It may be that we are overindulgent in inferences; but, nonetheless, we do infer from the opinion of the Chief Justice that *the filing of the non-Communist affidavits at the time a charge is filed before the Board should not properly be construed to have retroactive effect.* We gather this from the strong expressions of the Chief Justice in condemnation of communism. This court, both individually and collectively, holds a like point of view." (Emphasis added.)

It is submitted that the same considerations preclude giving to the ultimate compliance of the C.I.O. any retroactive effect to validate a noncomplying charge.

As against the foregoing body of authority, it is significant to note that there is not a single judicial decision which supports directly or by proper inference the position herein asserted by the Board. It is submitted, therefore, that the courts have consistently recognized that compliance is a prerequisite to the filing of a valid charge.

e. Analysis of the Board's Arguments.

In its brief in support of the petition for certiorari granted herein by this Court, the Board has put forward certain arguments which it asserts establish that a charge may be filed by a noncomplying union. These amici curiae believe that the matters set forth above completely refute these arguments. Analysis of each of the Board's arguments, furthermore, independently demonstrates how extremely tenuous the Board's position is.

(1) LANGUAGE OF THE ACT.

In analyzing the language of the Act, the Board has asserted that a comparison of the provision of Section 9(h) that "no complaint shall be issued" where the charging union is not in compliance with the affidavit requirement of 9(h), with the provisions of Section 9(h) that "no investigation shall be made" in representation cases and "no petition . . . shall be entertained" in union shop authorization cases[12] supports the conclusion that Congress did not preclude the General Counsel from receiving and investigating unfair labor practice charges filed by noncomplying unions.

It is submitted that this analysis is not tenable, for it is wholly repudiated by the legislative history applicable to Section 9(h), supra, pages 11-14, which conclusively proves a Congressional intent exactly contrary to that which the Board now seeks to establish. Furthermore, the phrase, "no complaint shall be issued," as used in Section 9(h) can only be construed as meaning that, within the meaning of the Act, a charge filed by a noncomplying union has no operative effect whatsoever. In the same sense, Congress provided in Section 10(b) of the Act that when unfair labor practice proceedings are barred by the six-months limitation period "no complaint shall issue." It would be a sad criterion of the administrative practices under the Act and a deplorable example of wastage of time, expense and effort if the Board were to contend, by a parity of reasoning, that a charge made after the elapse of the six-months limitation

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[12]Subsequent to the Board's decision below, the provisions for holding union shop elections were eliminated from the Act, and, in conformity therewith, the reference to union shop petitions was deleted from Section 9(h). Public Law 189, 82 Cong., 1st Sess., approved October 22, 1951.

period could be received and investigated even though no complaint could be issued on the basis thereof. To the same extent that the statutory prohibition against issuing a complaint barred by limitation surely does not sanction the processing of an invalid charge belatedly filed, so must the statutory prohibition against issuing a complaint at the instance of a noncomplying union be construed as not sanctioning the processing of an invalid charge filed by a noncomplying union.

The prohibitory phrases of Sections 9(f) (g) and (h) refer respectively in each instance to the following Sections of the Act:

> "9(c) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board . . . the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice."
>
> "9(e)(1) Upon the filing with the Board by a labor organization . . . of a petition alleging that 30 per centum of the employees . . . desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment . . . the Board shall . . . take a secret ballot, etc."
>
> "10(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, etc."

Taking Section 9(h) as an example, a comparison of the prohibitory phrases thereof with the Sections to which each phrase refers demonstrates that the prohibition in each instance is directed against the first affirmative act mentioned in the Section to which it relates that is subject to control by the Board—making an investigation, 9(c); entertaining a petition, 9(e)(1); and issuing a complaint, 10(b). It is to be noted that in authorizing the Board to issue a complaint "whenever it is charged that any person has engaged in or is engaging in" an unfair labor practice, Section 10(b) adverts to the making of a charge which, in the general sense indicated by the context of this Section, is not an act that is actually under the control of the Board. It is only reasonable to conclude that, recognizing this, the draftsman, in drafting the portions of Section 9(h) relative to unfair labor practices, followed the pattern established by his treatment of 9(c) and 9(e)(1) and prohibited the first affirmative act placed by said language under the control of the Board, that is, the issuance of the complaint. The interpretation of the language to which the Board calls attention is thus entirely consistent with that here contended for by these amici curiae and which every other relevant consideration has shown to be proper.

(2) INACTION OF CONGRESS IN AMENDING ACT.

The Board, substantially ignoring the conclusive pre-enactment history of the Act outlined above, further contends that the failure of Congress to enact an amendment expressly prohibiting the Board from entertaining charges filed by noncomplying unions operated (so these amici curiae presume for want of a more definite indication of the contention in the Board's brief in support of its petition for the

writ of certiorari granted herein) as an authorization to the Board to entertain such charges. The Board calls attention to the fact that General Counsel Denham in June, 1948, recommended that the Act be amended to provide expressly that charges could not be entertained unless prior compliance with the filing requirements had been effected, and that the Congressional Joint Committee on Labor-Management Relations recommended that the suggested amendment be adopted. The Board then asserts that, when Congress subsequently amended Section 9(h) of the Act by enacting Public Law 189, 82 Cong., 1st Sess. (hereinafter referred to as the "Taft-Humphrey Act"), it did not adopt the amendment so suggested. From this the Board apparently believes it should be concluded that Congress adopted the Board's construction of the statutory Section in question.

It is submitted that the report of the Joint Committee on Labor-Management Relations is not entitled to any consideration in that connection. These amici curiae have found no evidence of any Congressional consideration of the Committee's proposal and believe that no inferences as to Congressional intent can, under the circumstances, be drawn from the inaction of Congress. Actually, the inaction of Congress may be more logically and reasonably explained by the fact that there was no need for such legislation, because it was already clearly established by the legislative history attending the extensive consideration of the Taft-Hartley Act that it was the Congressional intent that compliance be a prerequisite to the filing of a charge,[13] and the Board's regulations, then in effect, also required that charging unions be in compliance.[14]

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[13]Supra, pages 11-14.

[14]Supra, pages 14-17.

It may be that it is the Board's contention that Congress' failure to amend the Act, as recommended by the Joint Committee, constituted an adoption by Congress of the Board's decisions in the matter of *Southern Fruit Distributors*, 80 N.L.R.B. 1283, and in the matter of *H & H Manufacturing Co. Inc.*, 87 N.L.R.B. 1873, holding that Section 9(h) of the Act requires compliance at the time of issuance of the complaint, rather than at the time of filing the charge. In the first place, the decisions in these cases were, at the time they were handed down, clearly at variance with every relevant consideration, including the legislative history of the Act, the Board's own rules of procedure and the General Counsel's administrative practices thereunder. Furthermore, nothing set forth in these decisions, which do nothing more than express conclusions, suggests that the Board gave any attention to these considerations. The weakness underlying the Board's contention may be further illustrated by an analogy. For approximately four years prior to this Court's decision in the *Highland Park* case, the erroneous determination of the Board in the case of *Northern Virginia Broadcasters, Inc.*, supra, page 17, relative to the necessity of compliance by the C.I.O., was outstanding. Certainly the fact that Congress did not, during this four-year period, enact a law reversing this erroneous Board holding was not binding on this Court in the ultimate resolution of that question. Similarly, the inaction of Congress as to amending the Act with reference to the filing of charges by noncomplying unions is of no moment in the resolution of the issues presented herein.

It is not necessary, however, to speculate as to whether the Taft-Humphrey Act was intended to support the inter-

pretation now urged by the Board. Not only was the proposed bill neither based on nor related in any way to the recommendation of the Joint Committee on Labor-Management Relations[15] adverted to by the Board, but it is irrefutably established that the joint authors of the bill intentionally avoided making any provision therein relative to the question of whether the charges originally filed by C.I.O. affiliates during the period of noncompliance should be deemed valid and capable of supporting new complaints issued after compliance. On August 21, 1951, in the course of Senatorial debate, Senator Nixon stated that he had advised his constituents that the proposed bill would have no effect whatever on cases which had been dismissed for noncompliance pursuant to the *Highland Park* decision. He asked whether Senator Humphrey, one of the co-authors of the bill, agreed with him and Senator Humphrey stated he did (97 Cong. Rec. 10675).

Further, Senate Report No. 646, supra, note 15, relative to the bill, which is repeated in substance in House Report No. 1082, id., specifically states that the bill was not intended to have any effect on the validity of such new complaints, as follows;

> "It is not intended that this bill, in itself, shall create any authority to reinstitute any unfair labor practice proceeding which has heretofore been dismissed by the courts or by the National Labor Relations Board, on the authority of the Highland Park case."

It is obvious, therefore, that the enactment of the Taft-Humphrey bill, without inclusion of an amendment specifi-

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[15]See Senate Report No. 646 and House Report No. 1082, 82 Cong., 1st Sess.

cally precluding the entertaining of charges filed by non-complying unions, cannot be considered as evidence of Congressional intent to adopt the construction of the Act here asserted by the Board.

It is also significant that this contention of the Board was evaluated by the United States Court of Appeals for the Third Circuit in the *Nina Dye Works* case, supra, page 2, at page 363, note 1, as follows:

> "The above subsections were later amended, 65 Stat. 601, 29 U.S.C.A. § 159(f), (g), and (h). While the Board suggests certain inferences from this, we do not think that the point merits discussion."

It is clear, therefore, that this contention of the Board is insupportable.

These amici curiae submit, therefore, that the clear requirement of Sections 9(f), (g) and (h) of the Act is that compliance therewith be effected prior to the filing of a charge. This conclusion is established by every relevant consideration—the language of Sections 9(f), (g) and (h), the intent of Congress when it enacted those Sections, the procedures followed by the Board thereunder, and the applicable judicial decisions. Since the charge which initiated this proceeding was therefore invalid, and since the filing of a valid charge is a condition precedent to the issuance of a complaint, it is respectfully submitted that the decision of the Court of Appeals, setting aside the order of the Board which was predicated upon the invalid complaint, should be affirmed.

B. The Board Exceeded Its Jurisdiction in Entertaining the Charge and Issuing the Complaint and Order Because Such Acts Were Prohibited by the Administrative Procedure Act.[16]

Reference has previously been made herein to the sections of the Board's Rules and Regulations, and Statements of Procedure under which unions have, from the inception of the Act, been required to come into compliance with Sections 9(f), (g) and (h) as a prerequisite to filing unfair labor practice charges.[17] In promulgating these Statements and Rules and Regulations the Board was and is subject to the procedural requirements of the Administrative Procedure Act,[18] Section 3(a) of which provides, in part, as follows:

> "Every agency shall separately state and currently publish in the Federal Register . . . (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations . . . *No person shall in any manner be required to resort to organization or procedure not so published.*" (Emphasis added.) 5 U.S.C. § 1002(a)

These amici curiae contend that since the Board instituted proceedings against the Respondent in direct violation of its only published procedures, it acted entirely without jurisdiction and the complaint and order issued herein are invalid.

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[16]Supra, page 7.

[17]Supra, page 14-15.

[18]Section 6 of the Act.

It has been said that Section 3 of the Administrative Procedure Act

> "continues the requirement of the Federal Register Act as to the publication of substantive rules *and in addition requires agencies to publish in the form of rules their organization and procedures.*" (Emphasis added.) Reich, Administrative Procedure Act: Analysis of its requirement as to rule-making, 33 A.B.A.J. 315 at 316 (1947).

The requirement that compliance be effected before a charge may be filed is clearly a "rule" of "procedure" as defined in Section 2 of the Administrative Procedure Act. 5 U.S.C. § 1001(c). Ginane, The Administrative Procedure Act, 95 Pa. L. Rev. 621, 622-627 (1947); Davis, Administrative Rules—Interpretative, Legislative and Retroactive, 57 Yale L. J. 919 (1948); *Willapoint Oysters, Inc. v. Ewing* (9th Cir., 1949), 174 F.(2d) 676, 686-7.

The clear effect of Section 3 is to establish the publication requirement as a condition precedent to the utilization by an administrative agency of procedures subject to that requirement. 60 Harv. L. Rev. 1339 (1947); see also 34 Geo. L. J. 457, 458 (1946). Cf. *United States v. Morton Salt Company* (1950), 338 U.S. 632, 642-646. The only rules of procedure thus established by the Board in compliance with the Administrative Procedure Act are those set forth in the Rules and Regulations and Statements of Procedure noted above, under which compliance by a charging union with Sections 9(f), (g) and (h) of the Act is required at the time the charge is filed or within ten days thereafter.[19] The

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[19] See Note 5, supra, page 15.

General Counsel's failure to dismiss the invalid charge filed herein by the noncomplying Union and the Board's refusal to dismiss the complaint issued pursuant to the invalid charge are tantamount to an abrogation of the Board's governing rules of procedure without complying with the terms of the Administrative Procedure Act. This the Board may not do. Section 10(e) of the Administrative Procedure Act, 5 U.S.C. § 1009(e), in defining the scope of judicial review of the action of an administrative agency, specifically provides that the reviewing court

> "... shall ... hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; ... (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law ..."

It is submitted, therefore, that in subjecting the Respondent to a procedure different than and contrary to the rules of procedure established by it pursuant to Section 3 of the Administrative Procedure Act the Board has violated that Act, thus exceeding its jurisdiction, and, as a consequence, the complaint and order issued against the Respondent pursuant to the charge filed by the noncomplying Union were invalid.

C. The Board Exceeded Its Jurisdiction in Entertaining the Charge and Issuing the Complaint and Order Because Such Acts Constituted an Arbitrary Discrimination Against the Respondent in Violation of the Fifth Amendment of the United States Constitution.

Even if it be assumed *arguendo* that the Act does not preclude the filing of charges by noncomplying unions, it is

clear that the Board has itself established such a requirement.[20] From the inception of the Act, the Board, pursuant to its procedural mandates, has required unions to be in compliance when filing charges and charges filed by noncomplying unions have been dismissed by the General Counsel in accordance with procedures thus established.[21] As a corollary to this procedure, after such dismissal the limitation period of Section 10(b) of the Act has continued to run, and, at the expiration of six months after the occurrence of the acts complained of, the union's rights before the Board have been lost, absent the effectuation of compliance and the filing of a new charge prior thereto.

In the present case the charging Union was not in compliance when it filed the charge on August 3, 1949, and had not been in compliance at any time after August 22, 1947, the effective date of the Act, by reason of its affiliation with the C.I.O. The C.I.O. did not come into compliance until December 22, 1949.

Applying the Board's established procedure to these facts, the charge should have been dismissed not later than ten days after filing, following which the six-month limitation would have expired. Instead, the General Counsel entertained the charge and on March 27, 1950, issued a complaint. Since the General Counsel has consistently dismissed charges filed by noncomplying unions, and since the charging Union herein was not in compliance at the time the charge was filed, the Respondent was thus subjected to the processes of the Board under circumstances identical to those in which other respondents have been free from

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[20]Supra, pages 14-17.

[21]Note 7, supra, page 16.

those processes. If this procedure were sustained, a corollary consequence of the General Counsel's failure to dismiss the charge against the Respondent would be that the Respondent would be deprived of the protection of the six-month limitation of Section 10(b) of the Act where other respondents similarly situated have enjoyed that protection. It is submitted that there is no justifiable basis for applying special procedures to the Respondent, which were not applied to others, and that the issuance of the complaint was therefore discriminatory and invalid and constitutes a denial to the Respondent of the protection assured to it under the Fifth Amendment of the Constitution of the United States:

> "No person . . ., shall be . . . deprived of . . . property, without due process of law . . ."

There can be no doubt that discrimination in the administration of an otherwise valid statute is as reprehensible under the Constitution as discrimination inherent in an act of legislation itself. *Rogers v. Alabama* (1904), 192 U.S. 226; *East Coast Lumber Terminal v. Babylon* (2nd Cir., 1949), 174 F.(2d) 106; *Senior Citizens League, Inc. v. Department of Social Security of Washington* (Wash., 1951), 228 P.(2d) 478; see also Tussman and tenBroek, *Equal Protection of the Laws*, 37 Cal. L. Rev. 341, 353 (1949).

It is clear from the authorities that to avoid the proscription of discrimination a classification must include all who are similarly situated with respect to the purpose of the law in question. *Connolly v. Union Sewer Pipe Company* (1902), 184 U.S. 540; *Brinkerhoff-Faris Trust and Savings Company v. Hill* (1930), 281 U.S. 673. Cooley, *Constitutional Limitations* (8th ed., 1927), V. 2, pp. 824-825; 37 Cal. L. Rev. 341, supra. It is fundamental from this that

impediments interposed by the government to the pursuits of anyone are within the constitutional proscription against discrimination unless equally applied to the pursuits of all under like circumstances. *Barbier v. Connolly* (1884), 113 U.S. 27. Therefore, it is obvious that the discriminatory action of the General Counsel in entertaining a charge against the Respondent by the noncomplying Union, while dismissing charges filed against other respondents by other noncomplying unions, resulted in a violation of the applicable provisions of the Constitution.[22]

If it be contended that discrimination is proscribed only by the Equal Protection clause of the Fourteenth Amendment, and not by the Due Process clause of the Fifth Amendment, it is submitted that the authorities have recognized that the basic principles of equal protection are inherent in the concept of due process. In *Steward Machine Company v. Davis* (1937), 301 U.S. 548 at 585, Mr. Justice Cardozo, in sustaining the validity of the Federal Social Security Act tax, said that the

> ". . . act of Congress is therefore valid, so far at least as its system of exemptions is concerned, and this though we assume that *discrimination, if gross enough, is equivalent to confiscation and subject under the Fifth Amendment to challenge and annulment.*" (Emphasis added.)

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[22]See, for example, *Mitchell v. State* (Fla., 1946), 25 So.(2) 73, where the Court stated: "This right of equal protection may not be taken away by the State choosing to proceed with the prosecution by some method which will deprive the [accused] of the benefit of the statute of limitation while others guilty of the like offense may have the benefit of the statute of limitation because the State has chosen to proceed with the prosecution by a different method."

This concept was reiterated in *Washington National Insurance Company v. Board of Review* (N.J., 1949), 64 A. (2d) 443, where the court said:

> "While the due process and equal protection guarantees are not coterminous in their spheres of protection, equality of right is fundamental in both."

And in *United States v. Yount* (W.D. Pa., 1920), 267 F. 861, the District Court said:

> "It seems reasonably clear that the 'due process of law' provision of the Fifth Amendment is broad enough in its scope and purpose to include the 'equal protection of the laws', which no state may deny to any person under the provisions of the Fourteenth Amendment."[23]

It is submitted, therefore, that the discriminatory treatment present in this case, founded on no discernible semblance of distinction between this and any other respondent and directed at the achievement of no purpose of the Act, is a denial of due process within the meaning of the Fifth Amendment and is invalid.

The Board may assert that a basis for the discriminatory treatment accorded to the Respondent exists in that noncompliance of the charging Union resulted only from the noncompliance of the C.I.O., with which the charging Union was affiliated, and that, since the Board did not at the time the charge was filed consider the C.I.O. to be a "national or international labor organization" within the requirements of Sections 9(f), (g) and (h) of the Act, such a case

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[23]See Antieau, *Equal Protection Outside the Clause*, 40 Cal. L. Rev. 362, 362-366 (1952).

should now be considered distinct from all others. It is submitted that this argument falls by itself. This Court has specifically held that the C.I.O. is a "national or international labor organization" within the meaning of the filing requirements. *National Labor Relations Board v. Highland Park Mfg. Co.*, supra, page 4. The Act does not distinguish between various states of noncompliance, whether resulting from the failure of the local itself, an international of which it may be a constituent unit, or a labor organization, such as the C.I.O., of which it may be an affiliate. The disabling consequences are identical.

The foregoing compels the conclusion that, in entertaining the charge filed by the noncomplying Union and issuing the complaint and order based thereon, the Board exceeded its jurisdiction by subjecting the Respondent to an unconstitutional discrimination and that the Board's order was invalid and was properly set aside by the Court of Appeals.

VI. CONCLUSION

In view of the considerations dealt with above, the entertaining of the charge filed by the noncomplying Union was improper under the express provisions of the Act and of the Administrative Procedure Act and constituted a discrimination against the Respondent under the United States Constitution. The subsequent compliance of the C.I.O. did not serve to validate the charge retroactively, and, accordingly, the complaint and order issued by the Board on the basis thereof were a nullity. Therefore, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

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(Appendix follows)

APPENDIX

The pertinent provisions of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C. (Supp. III) § 141, et seq., are as follows:

Section 6.

The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act.

* * * * * * *

Section 9.

(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board:

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative is no longer a representative as defined in section 9(a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10(c).

(3) No election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period, a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the

purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

* * * * * * * * *

(e)(1) Upon the filing with the Board by a labor organization which is the representative of employees as provided in section 9(a), of a petition alleging that 30 per centum of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

* * * * * * * * *

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9(e)(1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall

have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing:

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws, showing the procedure followed with respect to (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k)

participation in insurance or other benefit plans, and (I) expulsion of members and the grounds therefor; and (B) can show that prior thereto it has:

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f)(A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f)(B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9(e)(1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9(e)(1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in and is not a member of or support any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

* * * * * * *

Section 10. * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and ~~cause to be~~ served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the

serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U.S.C., title 28, secs. 723-B, 723-C).

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No. 97

IN THE

Supreme Court of the United States

October Term, 1952

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

vs.

THOMAS W. DANT, ET AL., COPARTNERS, *doing business as* DANT & RUSSELL, LTD.

BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE*

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CONSENT TO FILE

This brief *amicus curiae* is filed pursuant to Rule 27 of the Court's rules. The consent of both parties to the filing of this brief has been filed with the Clerk.

INTEREST OF THE CIO

The issue in this case is whether the National Labor Relations Board may validly issue a complaint in an unfair labor practice case when the charging union was not in compliance with Section 9(h) of the Taft-Hartley Act when it filed the charge, but came into compliance before the issuance of the complaint.

This question, generally speaking, arises in two different categories of cases.

There is, first, a group of cases in which the charges were filed by unions affiliated with the CIO prior to the date of the

CIO's compliance with Section 9(h), but the complaints were issued subsequent to CIO compliance. The present case is one of this group. Since the CIO initially complied with Section 9(h) on December 22, 1949, the number of cases of this type which are still unresolved is limited; and new cases of this sort will not recur. The equities of the individuals affected by these cases, whose wrongs cannot be redressed if the decision below stands, are of course entitled to full consideration however.

The other group of cases in which the same question arises is, however, of a recurrent character. In the cases in this category the union—either the CIO (or the AFL) or the international union or one or more of the locals involved—was unavoidably or inadvertently temporarily not in compliance with 9(h) when it filed the charge, but got into compliance before the complaint issued. As we shall show, unions can not avoid some sporadic periods of non-compliance, and others are virtually sure to occur through inadvertence, so that cases of this sort will constantly arise. The question before the Court thus derives its major continuing importance from these cases of temporary non-compliance rather than from the cases arising out of the CIO's initial non-compliance.

In this brief *amicus* we shall not repeat the able presentation of government counsel, but shall seek only to show, as to each of the two groups of cases presenting the issue, that both the equities and the congressional purpose will be served by holding that compliance at the time of the issuance of the complaint is what is required, and not compliance at the time of the filing of the charge.

ARGUMENT

I.

SINCE SPORADIC NON-COMPLIANCE WITH SECTION 9(h) IS UNAVOIDABLE, THE STATUTE SHOULD BE CONSTRUED TO MINIMIZE THE PENALTIES

There is no way by which unions can avoid being periodically out of compliance with Section 9(h) of the Taft-Hartley Act, no matter how hard they may try. Hence the Act should be construed so as to minimize the penalties for such sporadic

non-compliance. That can best be done by holding that compliance at the time of the issuance of the complaint is what is required, and not compliance at the time of the filing of the charge.

There is not here at stake any issue of driving Communists from union office, or of penalizing unions for refusing to rid themselves of Communist leaders. Communist-officered unions will not be able to comply either at the time of the charge or of the issuance of the complaint. The issue is simply the degree to which non-Communist unions are to be penalized for their inability or their inadvertent failure to meet, not the substance, but the red tape, of Section 9(h).

1. ***Some Sporadic Non-Compliance Is Unavoidable***

Section 9(h) of the Taft-Hartley Act is interpreted to require that there be "on file with the Board an affidavit executed contemporaneously or within the preceding twelve months by each officer" (1) of the local union, (2) of the national or international union of which the local is part, and (3) of the federation with which the national or international union is affiliated. It is plainly not possible, simply as a physical matter, for all of these affidavits to be always on file.

For example, the CIO at each annual Convention elects officers to serve until their successors are elected at the next Convention. Whenever a new officer is elected at a Convention the CIO is thus automatically out of compliance for whatever period, usually several days, is required for the transmission of the new affidavits to the Board for filing. During this period not only is the CIO out of compliance, but so is every international union affiliated with it and every local union of those international unions. This applies equally to the AFL, which likewise elects its officers at annual conventions, and, through the AFL, to the national and international unions affiliated with it and to their local unions.

In addition to these annual periods of unavoidable non-compliance to which the CIO and the AFL (and through them their affiliates and the locals of their affiliates) are subject, each national or international union and each local union will likewise be out of compliance for some period of time following each election by it of a new officer. Thus, if the international

and local unions also elect officers annually, as does the CIO, there may be three separate periods per year, of from one to several days each, during which the local union will be unavoidably out of compliance. The situation is even worse for a national or international union. For, when charges are filed by a national or international union, compliance is required not only of it (and of the CIO or AFL) but of any local unions involved as well. The local unions involved may number in the hundreds, as was the case when the United Steelworkers of America filed charges of refusal to bargain against the major steel companies last year.

Non-compliance will also occur whenever an officer dies and is replaced, whether temporarily or permanently, until the affidavit of the replacing officer can reach Washington and be filed with the Board. Since the labor movement has large numbers of officers at all levels of its organizations, instances of this sort are of frequent occurrence.

Periodic non-compliance resulting from the election of new officers could perhaps be avoided by retaining the same officers permanently, but sporadic non-compliance resulting from the death of officers appears to be quite unavoidable.

2. ***Some Inadvertent Non-Compliance Is Inevitable***

In addition to the unavoidable periods of non-compliance following the replacement of any officer of a local, international or federation, there are other periods during which unions will be inadvertently, but inevitably, out of compliance.

For example, the CIO's non-communist affidavits are normally filed immediately after each annual Convention, at which officers are chosen to serve until their successors are elected by the next Convention. However, the affidavits are, under the statute, good only for one year. Thus if one Convention follows another by any period of more than a year, say a year and a week instead of a year exactly, the affidavits will expire on their anniversary and the federation and all of its affiliates and their locals will be out of compliance. It is of course possible for the officers whose terms are expiring to file new affidavits for the remaining week or two of their terms, and this has sometimes been done. Probably more often, however, the

federations, the international unions, and the locals have simply overlooked gaps of this sort, with resulting non-compliance.

Again, often unions, and particularly local unions, sometimes simply overlook the need to refile the affidavits until something happens to draw it to their attention. Unions, it must be remembered, are not operated or staffed like banks. Both the smaller internationals and the locals operate usually without legal advice, and in the case of the latter, often without paid help of any kind.

To sum up, all unions are sometimes unavoidably out of compliance, and most unions are also, inadvertently but excusably, out of compliance at various other times also. If an unfair labor practice occurs which involves both an international union and a large number of its locals, it is highly probable that the event will find some of them out of compliance, and that they can all simultaneously be brought into compliance for even a limited time only by a concerted effort.

3. ***The Statute Should Be so Construed as to Minimize the Penalties for Technical Non-Compliance***

Since, as we have shown, every union is unavoidably out of compliance with Section 9(h) at various times, and in addition is probably inadvertently out of compliance for various other periods, the Act should, so far as possible, be so construed as to minimize the consequences of these sporadic periods of technical non-compliance, in order to avoid injustice and to facilitate orderly administration.

Ideally neither the validity of the charge or of the complaint should turn on technical compliance on the date of the filing of charge or complaint, since such compliance may be affected by so many chance occurrences. The Congress itself so recognized a year ago when it amended the Act to eliminate the union shop authorization election, among other things. The substitute provision which Congress then enacted provides that only unions in compliance with 9(h) can validly execute union shop contracts, but the validity of the contract is made to turn not on technical compliance on the date of execution of the contract, but on whether the union "has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with Sections 9(f), (g)

and (h)." Public Law 189, 82nd Congress; 29 USC, Sec. 158, as amended. As the Senate Report on this provision stated:

> "The provision for such notice affords a simple means of enabling all parties concerned to know conclusively whether the requirements of Section 9(f), (g) and (h) have been met."

Senate Report No. 646, 82nd Congress, First Session, p. 1. In contrast, the technical fact of compliance at any given time rests on adventitious circumstances and cannot be certainly known.

We believe that it would be open to the Board to give to Section 9(h) a construction which would effect a similar result. The Board could, we think, hold that the requirements of 9(h) are met if within the preceding year the union has filed affidavits by those who were officers at the time of such filing. The Board, however, has not adopted such a construction, but rather has put on the Section the technical constructions to which we adverted in demonstrating the impossibility of compliance at all times and the likelihood of non-compliance at any time.

This very strict construction which the Board has given the filing requirements emphasizes the desirability of so construing the statute as to minimize the penalties for non-compliance, as the Board has done in the ruling which is now before the Court. It is plainly open to the Court to construe Section 9(h) as requiring compliance at the time of the issuance of the complaint, but not at the filing of the charge. The literal language of the Section as well as the other considerations pointed to in the Board's brief fully support such an interpretation.

Such a construction will accord with the intention of Congress. In its 1951 amendments Congress demonstrated that it is interested in the substance of compliance with Section 9(h), not the technicalities. Moreover Congress surely meant to encourage unions to file the affidavits called for by Section 9(h), and that design would hardly be promoted by penalizing unions, which have sought to comply, for occasional unavoidable or inadvertent non-compliance.

The equities of the situation point to the same conclusion. When a union has sought in good faith to comply with Section

9(h), it is entirely equitable to permit it to use the remedial processes of the Act to redress unfair labor practices against it or its members. Where the unfair labor practices involve individuals, as do the illegal discharges which are involved in this particular case, the charge need not even have been filed by the union at all, but could have been filed by the individual employees concerned, in which event no issue of compliance would ever have arisen. This pointedly illustrates the highly technical nature of the question which is here at stake, and the injustice which would be done to the individual employees by a too strict construction of the Act. Their equities are surely not dependent on whether the union was technically in compliance when it filed the charge, or only when the complaint issued.

As far as respondents in unfair labor practice cases are concerned, their equities, or lack of them, are likewise in no way dependent on whether the charging union was in compliance on the date it filed the charge or on the date the complaint issued. From the standpoint of respondents these facts are purely fortuitous: if their unfair labor practices go uncorrected by reason of them, they have simply succeeded in thwarting the policies of the Act.

4. ***The Inequities Inherent in Section 9(h) Will Be Minimized by Requiring Compliance Only at the Time of the Complaint***

As we have shown, certain inequities and difficulties of administration are inherent in the statute, whether compliance is required on the date of the complaint or on the date of filing the charge. But these inequities and difficulties can be minimized if the Act is construed as requiring technical compliance only on the date of the issuance of the complaint.

Under such a construction, unions will be free promptly to file charges of unfair labor practices whenever they occur. (Considerable expedition is required since the statute requires that charges be filed within six months.) Then, if the charging union is notified by the Board that it or some affiliated body whose compliance is essential to its compliance, is not in compliance, it can, within the period set by the Board, endeavor to get itself and its affiliated bodies into compliance. Thus, un-

der the practice which the Board now follows a charging union is required to get into compliance within 10 days after the charge is filed; otherwise the charge is dismissed.

Under the alternative construction given the Act by the Court below, the union would have to check its compliance status and that of its affiliated bodies before filing a charge. If it or one of the affiliated bodies made a mistake, so that they were not technically in compliance when the charge was filed, their case would be dead and redress of the unfair labor practices would be forever barred.

But that is not the only, or even the major, reason for our preferring a construction of the Act which requires compliance only at the issuance of the complaint. For the choice is not really between compliance at the filing of the charge or compliance at the filing of the complaint, but between compliance at the filing of the complaint and compliance at both times. If this Court should hold that compliance at the filing of the charge is necessary, we have little doubt that the Board would, under the language of the statute, hold compliance at the time of the filing of the complaint to be necessary also. Indeed any other result would be highly anomalous, since the issuance of a complaint is a proceeding both more formal and more practically significant than the filing of a charge.

Thus the choice, as we see it, is between requiring that there be technical compliance on a single date, viz., the filing of the complaint, and requiring that there be technical compliance on two dates, viz., the filing of the charge and the filing of the complaint. The likelihood of a union's being technically not in compliance would, of course, be doubled if the requirement were applied as of two separate dates rather than as of one. We cannot believe that either justice or the intention of Congress would be promoted by such a result.

II.

UNIONS AND EMPLOYEES SHOULD NOT BE UNNECESSARILY PENALIZED FOR THE CIO'S NON-COMPLIANCE PRIOR TO THE HIGHLAND PARK DECISION

What we have said up to now has related to the difficulties of unions in remaining in compliance at all times even if they

attempt to do so, and to the bearing of these facts on the question of statutory construction which is before the Court. The present case, however, does not arise out of the difficulties or impossibility of remaining continuously in technical compliance, but is one of a group of cases which arose because the CIO did not comply with 9(h) during a period of time when (1) the Labor Board was ruling that the CIO need not comply in order for its affiliated unions to be in compliance, and (2) the CIO was litigating the constitutionality of 9(h). We believe that a review of this background will demonstrate that, as to this group of cases too, both the equities and the intention of Congress will best be served by applying the compliance requirement to the date of the complaint only.

Among the new provisions contained in the Taft-Hartley Act, which went into effect late in August, 1947, were the now well-known non-communist affidavit provisions. These provisions, found in Section 9(h) of the Act, subject a labor organization to certain enumerated disabilities unless there are on file with the National Labor Relations Board non-communist affidavits executed by the officers of the organizations and by the officers "of any national or international labor organization" of which it is an "affiliate or constituent unit."

Immediately after the enactment of Taft-Hartley the question arose whether, in order for a national or international union, such as the United Automobile Workers, to be in compliance with Section 9(h), it was necessary for the officers of any federation to which it belonged, such as the AFL or CIO, to file the affidavits, or whether it was sufficient for the officers of the national or international to file. The Labor Board held that compliance by the officers of the national or international union was sufficient, and that it was not necessary for the officers of the CIO to comply in order for the national or international unions affiliated with the CIO to be in compliance. (*Northern Virginia Broadcasters*, 75 NLRB 11, decided Oct. 7, 1947.)

In reliance upon this ruling, and pending tests of the constitutionality of Section 9(h), the Congress of Industrial Organizations decided that its officers would not comply with Section 9(h), although most of them did in fact file the affidavits as

officers of their own international unions. Eventually this Court, by a divided vote (on some issues the vote was evenly divided) affirmed lower court decisions upholding the constitutionality of Section 9(h). *American Communications Association* v. *Douds; United Steelworkers of America* v. *National Labor Relations Board*, 339 U. S. 382. These decisions were rendered in the Spring of 1949.

While the Labor Board took the position from the outset that it was not necessary for the officers of the CIO to comply in order for national or international unions affiliated with the CIO to be in compliance, it at the same time ruled that compliance by CIO officers was necessary in order for local industrial unions directly affiliated with the CIO to be in compliance. Local industrial unions are locals which are not affiliated with a national or international union but directly with the CIO. The officers or staff of the CIO service these unions, participate in their contract negotiations, etc., and it was on that basis that the Labor Board held that compliance by the officers of the CIO was essential to compliance by these local industrial unions.

Since the constitutionality of Section 9(h) had been upheld by the Supreme Court, and in order to make it possible for local industrial unions to be in compliance, the officers of the CIO who had not already done so filed non-communist affidavits shortly after the CIO convention in November, 1949, and the affidavits have been periodically filed by the CIO's officers since that time.

The question ruled upon by the Labor Board in October 1947, in the *Northern Virginia Broadcasters* case did not reach this Court until four years later in *Labor Board* v. *Highland Park Co.*, 341 U. S. 322 (1951). This Court, by a divided vote, overruled the construction which the NLRB had given the Act, and held that the international unions affiliated with the CIO were not in compliance with Section 9(h) until the officers of the CIO filed the affidavits.

During the period of more than two years which intervened between the effective date of the Taft-Hartley Act and compliance with Section 9(h) by the CIO, the NLRB, pursuant to its ruling in *Northern Virginia Broadcasters*, processed many

—probably several hundred—unfair labor practices initiated by charges filed by CIO affiliated unions. In the vast majority of these cases, both the charges were filed and the complaints were issued before CIO compliance. In a number of cases, however, like the present, CIO compliance intervened between the charge and the complaint.

Following the *Highland Park* decision, and pursuant to it, the Board dismissed the complaints in unfair labor practice cases before it in which the complaints had been issued at the instance of CIO affiliates in the period prior to CIO compliance. The Board also secured the remand to it of the unfair labor practice cases falling in this category which were pending in the courts, and had not gone to final judgment, and similarly dismissed the complaints in these cases. A total of some forty unfair labor practice complaints were thus dismissed by the Board.

The Board did not, however, interpret the *Highland Park* decision as requiring the dismissal of complaints in cases like the present, where CIO compliance had intervened between the charge and the complaint. For, as it has consistently since the passage of the Taft-Hartley Act, it interpreted Section 9(h) as requiring compliance at the issuance of the complaint, not at the filing of the charge. As we shall show, Congress, when it enacted the legislation, already referred to, to mitigate the retroactive effects of the *Highland Park* decision, likewise understood 9(h) to require compliance only at the time of the filing of the complaint.

The dismissal, as a result of the *Highland Park* decision, of the complaints which had issued prior to CIO compliance was a source of considerable distress to the labor unions and individuals affected. In addition, the *Highland Park* decision cast doubt on the status of thousands of collective bargaining contracts containing union shop provisions which had been negotiated by CIO affiliates in reliance upon Board authorizations issued during the period of CIO non-compliance. The *Highland Park* decision likewise cast doubt upon the status of certifications issued to CIO unions in representation proceedings conducted during the period of CIO non-compliance.

Accordingly the CIO asked Congress to give it relief from

these retroactive effects of the *Highland Park* decision. We asked that the outstanding union security contracts and certifications be validated. This the Congress did, the bill passing the Senate unanimously and the House with only a handful of dissenting votes. Public Law 189, 82nd Congress.

As respects the unfair labor practice complaints which the Board had dismissed because of the *Highland Park* decision, the situation was somewhat more complicated. We felt that the dismissal of these complaints imposed a hardship upon the unions and employees concerned. Many of these cases had been pending for years, and in most of them no issue of CIO compliance had ever been raised by the employer. It seemed to us highly inequitable, for example, that employees illegally discharged years ago for union activities should have proceedings looking to the redress of their rights dismissed because of a legal technicality never raised in their case.

This problem was, we stress, conceived to arise only with regard to cases in which the complaints had issued before CIO compliance, not to cases like the present where the CIO had complied after the charge and before the complaint. And even as to the cases where the complaints had issued before CIO compliance, we believed that the Board could and should issue new complaints upon the old charges. (This view has since been sustained by the General Counsel of the Board, but has not yet been passed upon by the Board or the courts.) While it was not entirely clear that the Board would issue new complaints, this doubt did not stem from the fact that the CIO was not in compliance when the charges were filed, but rather from fear that the Board would be unwilling to expend its limited manpower and budget in starting afresh in these old cases.

Because of our belief that the Board could issue new complaints on the old charges, and because the virtually unanimous agreement in Congress which made possible the enactment of the bill could not have been obtained on this issue, the CIO did not ask the Congress to validate the unfair labor practice complaints and subsequent proceedings invalidated by *Highland Park*, but only to validate union security contracts and representation certifications. Instead the Senators spon-

soring the remedial legislation agreed that while the legislation would not undertake to validate the old unfair labor practice complaints (and subsequent proceedings), it would be without prejudice to the right of the Board to issue new complaints on the old charges. To make sure that the remedial act was given this construction, a colloquy on the floor of the Senate was arranged between Senator Humphrey, who was in charge of the bill and Senator Nixon, who was one of its co-sponsors. The text of this colloquy (Congressional Record, 82nd Congress; First Session, Volume 17, Pages 10674-5) is as follows:

"Mr. NIXON. Mr. President, I think the Senator from Minnesota is aware of the fact that I have a number of constituents in California who have raised a question as to the effect of this bill on complaints issued by the Board following the Highland Park decision, on the ground that, at the time the complaints were issued, the parent CIO was not in compliance with the non-Communist affidavit requirement. I am informed with respect to one case in particular, involving a large number of employees and a large amount of back pay, that, on the basis of the decision in the Ohio Oil Co. case, that particular case has been dismissed by the Board, by reason of the Highland Park rule.

"Several of the employees, as well as officials of the company, have written to me. I have informed them that, in my opinion, this bill has no effect whatever on the pending cases. I wonder whether the Senator from Minnesota agrees with that interpretation.

"Mr. HUMPHREY. I fully agree with the interpretation which has been made by the Senator from California, in his reply to his constituents. I have checked this matter, as the Senator knows, with the attorneys for the National Labor Relations Board, as well as with the legal counsel for our committee, and they have all assured me that this bill would have no effect one way or other on complaints which are dismissed on the basis of non-compliance. This bill is directed, as I pointed out earlier, toward validating the representation elections and the union-shop elections, under section 9 of the Labor-Management Relations Act.

"Mr. NIXON. I am glad to note that the Senator agrees with that interpretation, because, as I now understand, the Ohio Oil Co. case, and all similar complaint cases, dis-

missed pursuant to the Highland Park rule, because the charging union was not in compliance when the complaint was issued, would be in exactly the same position, if this bill becomes the law, as before.

"Mr. HUMPHREY. The Senator is correct again in his conclusion. I should like to make it clear to him, however, that the oil workers should not be penalized because the CIO or the National Labor Relations Board took the position they did regarding the non-Communist affidavits. Personally, I believe that the general counsel of the National Labor Relations Board should issue a new complaint. That is my own personal opinion. But this bill—and I want this to be quite clear, so that the legislative history will be as it should be—this bill does not prejudge the general counsel's action, one way or other. In other words, those cases are separate entities, removed from the purview of this bill.

"Mr. NIXON. When the Senator from Minnesota suggests that the Board might well issue a new complaint I think he will agree with me that it is not in any way, as he has indicated, prejudging the merits of the complaint.

"Mr. HUMPHREY. I said that.

"Mr. NIXON. Yes. I agree with the Senator, I think the issue should be solved and resolved one way or the other.

"Mr. HUMPHREY. That is correct.

"Mr. NIXON. But I also think it is important for us to recognize that, so far as this bill is concerned, it in no way affects the merits or the potential decision which may be made in a pending case.

"Mr. HUMPHREY. The Senator is correct; and as I stated to the minority leader and to the Senator from Georgia, this particular bill pertains to the representation and the union-shop elections, as conducted under the terms of section 9(c) of the Labor-Management Relations Act, as affected by the Highland Park decision, and it is not and should not be prejudicial to the ruling on the part of the general counsel or the National Labor Relations Board, one way or other, insofar as the oil workers cases are concerned."

This decision clearly shows, we submit, that the Senators, like the Labor Board, understood Section 9(h) as requiring

compliance only at the filing of the complaint, and not at the filing of the charge. Thus Senator Nixon referred to the cases "dismissed pursuant to the *Highland Park* rule, because the charging union was not in compliance when the complaint was issued." Moreover, both the Senators agreed that the power of the Board to reissue these complaints would not be affected, one way or the other, by the remedial legislation: it, obviously, did not occur to them that the CIO's non-compliance when the charges were filed would bar reissuance. (That defect, if it were one, could, of course, not have been cured by new charges, since the six-month periods of limitation had long run.)

The history and enactment of this remedial legsilation likewise shows, we submit, that Congress did not wish to see CIO unions and members suffer hardships on account of CIO non-compliance prior to *Highland Park*. On the contrary, Congress with virtual unanimity, recognized that the CIO unions and members were equitably entitled to relief from the retroactive application of that decision.

The same considerations which moved the Congress to enact remedial legislation, should, we submit, move the court here to so interpret the statute as to mitigate its otherwise harsh consequences.

CONCLUSION

For the reasons stated, we respectfully submit that the decision of the court below should be reversed.

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